

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

June 11, 1954
Opinion No. 54-81

TO: Mr. W. R. Cox
State Real Estate Commissioner
State Real Estate Department
424 State Office Building
Phoenix, Arizona

RE: Licensing officers and employees of corporations to deal with corporation property.

QUESTION: Is a corporation who sells real property owned by the corporation through its officers who are compensated for their services by the corporation and through other employees of the corporation who are compensated on the basis of the actual amount of the property sold, in violation of Section 67-1703, A.C.A. 1939.

Section 67-1703, A.C.A. 1939, provides:

"67-1703. Broker or salesman to have license. It shall be unlawful for any person to engage in the business of a real estate broker or salesman without first obtaining a license as prescribed in this act, and otherwise complying with the provisions of this act."

Section 67-1704, A.C.A. 1939, as amended, further provides in pertinent part:

"67-1704. Exceptions. - Except as to the requirements with respect to the subdivision of land, this article shall not be construed to apply to:

1. A person, or corporation through its officers receiving no special compensation therefor, dealing in his or its own property;* * *"

At the outset, we will state that the language of Section 67-1704, supra, seems abundantly clear and unambiguous that a corporation, through its officers, may engage in selling its own property without a license, so long as no special compensation is paid

therefor. We do not believe that the statute is susceptible of any construction which would allow a corporation to sell its own property through its officers and employees and pay them by the unit for the property sold without first licensing its officers or employees.

A very similar question was decided by the Supreme Court of California in the case of PHELAN v. HILDA GRAVEL MINING CO. (1928) 263 P. 520. In that case, an officer of the corporation sought to recover a commission for the sale of corporate property and alleged he was not required to be licensed under a section of the California code, which is similar to our Section 67-1704.

The California Exemption Section, Statutes of 1919, page 1252, provided:

"The provision of this act shall not apply to any person, co-partnership, or corporation who shall perform any of the acts aforesaid with reference to property owned by such person, co-partnership, or corporation."

The Court, in deciding the contention of the officer of the corporation that he was not required to be licensed under the above quoted section, stated:

"* * *We are of the opinion that Phelan was not qualified under the said act regulating real estate agents and brokers to demand a commission as the agent of the corporation. That he may have been clothed with authority to contract for the sale of the corporation's property as its representative or attorney in fact may be conceded, but a delegation of that authority would not immune him from the provisions of an act which was designed to operate uniformly upon all persons who engage themselves to act as real estate agents or salesmen for compensation. He was not the owner of the corporation real property by virtue of his office as a director. Neither his office nor his contract converted him into an owner of the corporation's real property within the meaning and intent of the clause of section 2 of said act, which exempts the owner of real property from a compliance with the provisions of said act in cases of sales made by him. A director, who as an individual contracts for the payment of commissions on the sale of the corporation's real property, would not be relieved of any burden that the law imposes upon all persons who engage in a similar service. Appellant was at no time a licensed real estate broker.* * *"

It is our opinion therefore that officers and employees of a corporation who sell real property of the corporation and receive special compensation therefor are required to be licensed, and failure to secure such a license is a violation of the Real Estate Act.

ROSS F. JONES
The Attorney General

RODERIC M. JENNINGS
Assistant to The
Attorney General