



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Tom L. Beauchamp
Secretary of State
Austin, Texas

Attention: Mr. Frank D. Near

Dear Sir:

Opinion No. O-1573

Re: Whether the Secretary-Treasurer of a National Farm Loan Association, who sells land foreclosed on by the Federal Land Bank and the Federal Farm Mortgage Corporation, is a "real estate dealer" or "real estate salesman" within the provisions of the "Real Estate Dealers License Act."

We have your letter of October 6, 1939, requesting an early opinion from this department as to whether or not the Secretary-Treasurer of a National Farm Loan Association is a "real estate dealer" or "real estate salesman" within the definitions of those terms set out in the "Real Estate Dealers License Act," House Bill 17, Acts 46th Legislature, Regular Session.

We quote from your letter as follows:

"The Federal Land Bank and the Federal Farm Mortgage Corporation, under the provisions of the Farm Loan Act, make loans throughout the State of Texas. Frequently these loans result in foreclosure under the deed of trust liens securing such indebtedness and are sold at Trustee's sale by an agent and/or attorney in fact appointed by the owner and holder of the indebtedness, at which time, in many instances, the Federal Land Bank or the Federal Farm Mortgage Corporation becomes the purchaser at such sale. After such a sale and purchase by the Federal Land Bank or the Federal Farm Mortgage Corporation, such lands are offered for sale by the Federal Land Bank or the Federal

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Farm Mortgage Corporation through the Secretary-Treasurer of the National Farm Loan Association through which the loan was financed. A commission is paid to such Secretary-Treasurer for the handling and sale of such lands.

"Under the facts stated above is the Secretary-Treasurer of the National Farm Loan Association, by reason of handling the sale above referred to in behalf of such corporations, a real estate dealer or salesman under the provisions of the Act and required to obtain a license from the administrator of the Securities Division?"

In order to have all of the facts before us, we have called the local office of the National Farm Loan Association and talked with the acting Secretary-Treasurer, Mr. Ike O. Williams. According to Mr. Williams, the secretary-treasurers sell land for the Federal Land Bank and the Federal Farm Mortgage Corporation on a commission basis, and retain the commission as their personal funds. Putting it in Mr. Williams' own words, they act as any other real estate salesman would act in the sale of property for a client, and they act in their individual capacities and not in their official capacity as secretary-treasurer of an association.

The statutory authorization for the organization of National Farm Loan associations, generally, is contained in sections 711 to 761, inclusive, Title 12, United States Code Annotated. The powers and duties of the secretary-treasurer are outlined in section 714, and the powers of the association are outlined in section 761. Nowhere in the statutory provisions have we found where the secretary-treasurer, in his capacity as such, is authorized to sell land either for the Federal Land Bank, the Federal Farm Mortgage Corporation, or any other person or corporation. Neither is there any power to be found whereby a National Farm Loan association can sell land for any of the organizations or persons enumerated. For these additional reasons, it appears that when the secretary-treasurer of a National Farm Loan association sells land as outlined above, he must act in his individual capacity, and not in his representative capacity.

We quote the applicable provisions of the "Real Estate Dealers License Act" as follows:

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"Sec. 2. The following terms shall, unless the context otherwise indicates, have the following meanings:

"(a). (1). The term 'Real Estate Dealer' shall include every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting compensation or other valuable consideration, lists for sale, sells, exchanges, buys, rents, or offers, or attempts, or agrees to negotiate a sale, exchange, purchase, or rental of an estate or interest in real estate, or collects, or offers, or attempts, or agrees to collect rent for the use of real estate, or negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon or transfer of real estate; or auctions, or offers, or attempts, or agrees to auction any real estate; or appraises, or offers, or attempts, or agrees to appraise any real estate; or who advertises, or holds itself, himself, or themselves out as engaged in the business of selling, exchanging, buying, renting, or leasing real estate, or assists or directs in the procuring of prospects, or the negotiation or closing of any transaction which does or is calculated to result in the closing of any transaction which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate, or who buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or in the improvements thereon. ...

"Sec. 3. The provisions of this Act shall not apply to, and the terms 'Real Estate Dealer' and 'Real Estate Salesmen,' as above defined, shall not include:

"(a). Any person or company who, as owner or lessor, shall perform any of the acts set out in Section 2, Subdivision (a) with reference to property owned or leased by them, or to the regular employees thereof with reference to the property owned or leased by such person or company

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where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or it- self out as a full or part-time dealer in real estate." (Underscoring ours.)

You are respectfully advised that in the opinion of this department, a secretary-treasurer of a National Farm Loan association is a "real estate dealer," as that term is defined in Section 2 (a) (1), quoted above, since such person is a person who for another or others (for the Federal Land Bank and the Federal Farm Mortgage Corpora- tion), with the expectation of receiving a valuable con- sideration (for a commission), sells, or offers or agrees to negotiate a sale of an estate or interest in real estate, and that such a secretary-treasurer is not a regular employee of a person or company engaged in the investment and management of its own property, described in Section 3 (a) of said Act. It follows that such a secretary- treasurer must obtain a real estate dealer's license.

Trusting that this gives you the desired informa- tion, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *James Noel*
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JH:pbp

APPROVED OCT 20, 1939

Gen. G. Mann
ATTORNEY GENERAL OF TEXAS

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