



Office of the Attorney General

State of Texas

December 18, 1998

DAN MORALES

ATTORNEY GENERAL

Mr. Jay Brummett,
Chair, Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

Letter Opinion No. 98-119

Re: Whether the licensing and registration requirements of article 6573a, V.T.C.S., apply to persons who act to acquire or dispose of real estate on behalf of their employers (RQ-1026)

Dear Mr. Brummett:

You request our opinion as to whether the licensing and registration requirements of article 6573a, V.T.C.S., apply to persons who act to acquire or dispose of real property on behalf of their employers.

Article 6573a requires the licensing of any "person" who acts as a "real estate broker or a real estate salesperson." V.T.C.S. art. 6573a, § 1(b). "Person" is defined to include "a governmental body, a limited liability company, limited liability partnership, partnership, or corporation."¹ Section 9A was added to the statute in 1997.² It provides, in relevant part:

(a) A person may not sell, buy, lease, or transfer an easement or right-of-way for another for compensation, or with the intention or

¹The definition of "person" was amended twice by the Seventy-fifth Legislature. Chapter 1047, section 1 provides:

"Person" means an individual or any other entity including a government or governmental subdivision or agency, a limited liability company, a limited liability partnership, a partnership, or a corporation, foreign or domestic.

Act of June 1, 1997, 75th Leg., R.S., ch. 1047, § 1, 1997 Tex. Gen. Laws 3981, 3981.

Chapter 1177, section 1 provides:

"Person" means an individual or any other entity, including but not limited to a governmental body, limited liability company, limited liability partnership, partnership, or corporation, foreign or domestic.

Act of May 28, 1997, 75th Leg., R.S., ch. 1177, § 1, 1997 Tex. Gen. Laws 4526, 4526.

²*Id.* § 8.

in the expectation or on the promise of receiving or collecting compensation, for use in connection with telecommunication, utility, railroad, or pipeline service unless the person is:

(1) licensed as a real estate broker or real estate salesman under this Act;

(2) exempt from this Act for the purpose of selling, buying, leasing, or transferring an easement or right-of-way; or

(3) registered with the commission under this section.

(b) The commission shall maintain a registry of persons who are registered under this section.

You first ask whether employees of a corporation or other business entity that is required to register under section 9A, or exempt thereunder, must themselves be registered or licensed as a real estate broker or salesperson or otherwise exempt.

Section 9A was added to article 6573a to create a registration system for a category of “persons” known as “right-of-way consultants.” The bill analysis to Senate Bill 577 states:

Currently, Texas governmental and business entities purchase easements and rights-of-way from private landowners to facilitate the delivery of services and products. Historically, real estate brokers have not played a role in such transactions. There are concerns that these transactions should fall outside the purview of the Real Estate Licensing Act in order to preserve the unique nature of such transactions. This bill requires right-of-way contractors to be registered with the Texas Real Estate Commission.

House Comm. on Licensing & Admin. Procedures, Bill Analysis, S.B. 577, 75th Leg. (1977). Representative Holzhauser, one of the sponsors of Senate Bill 577, declared during consideration of the legislation:

The compromise reached in Senate Bill 577 retains existing exemptions from the Real Estate License Act for this activity and for employees and agents of businesses engaging in the work, creates a registration system for right-of-way consultants, and provides for a complaint system for aggrieved persons.

See H.J. of Tex., 75th Leg., at 3938 (1997). Thus, legislative history makes clear that section 9A was intended to target right-of-way contractors who act as agents for third parties in easement or right-of-way transactions. Such business entities, in the course of their activities, “sell, buy, lease, or transfer easements or rights-of-way *for another for compensation.*” (Emphasis added.)

A right-of-way contractor that is a partnership or corporation, like any other business, may act only through its agents who are natural persons. See *Henry S. Miller v. Treo Enters.*, 573 S.W.2d 553, 555 (Tex. Civ. App.--Texarkana 1978), *aff'd*, 585 S.W.2d 674 (Tex. 1979). For that reason, we believe that the employees or agents of a right-of-way contractor must themselves fulfill at least one of the requirements of section 9A: they must (1) be licensed as a real estate broker or salesperson; (2) be exempt from article 6573a under some other provision; or (3) register with the commission. This construction is consistent with another new provision of article 6573a. Subsection 6(d) provides that

[f]or a corporation, limited liability company, partnership, limited liability partnership, or any other entity to be eligible for a registration or renewal of registration under section 9A of this Act, it must designate one of its officers, partners, or managers to act for it. The designated person must be an individual registered under Section 9A of this Act.

In our opinion, subsection 6(d) indicates that the legislature intended that persons authorized to act for an entity registered under section 9A would also be required to register, or be otherwise exempt under the provisions of section 9A.

You also ask whether the licensing and registration requirements of section 9A apply to a business entity’s employees who acquire and dispose of real property on behalf of their employers. Section 9A is applicable only to a “person” who acquires or disposes of an easement or right-of-way *for another for compensation.* A “person,” including a corporation, that acquires or disposes of its own property does not do so “for another” under the terms of section 9A. Since, as we have noted, a corporation can act only through its agents, it follows that its employees are not required by section 9A to register or otherwise comply with the requirements of section 9A when they act to acquire or dispose of the corporation’s property.

We are supported in this conclusion by a 1975 colloquy between Senator John Traeger and Andy James, then Commissioner of the Texas Real Estate Commission, during a legislative discussion of amendments to article 6573a:

Senator Traeger: Sir, there’s nothing in this act [] that in any way infringes on an owner’s right to sell his own property?

Commissioner James: No sir.

Senator Traeger: And there's nothing that prevents a member of a partnership who owns a piece of land—or any of those partners—[from] selling any or part, or all or part of the land?

Commissioner James: No, sir.

Senator Traeger: So that *the entire thrust of the [revised] act is directed towards the educational qualifications and rules affecting people in the real estate business and in no way infringes upon any owner's right to do anything he wants to do with his land, or any partnership, or any corporation?*

Commissioner James: You are correct.

Hearings on S. B. 344 Before the Senate State Affairs Comm., 64th Leg. (Mar. 3, 1975) (tape available from Texas State Library & Archives Comm'n) (emphasis added). This testimony affirms the legislature's intention that corporations and partnerships that are not engaged in the business of real estate³ are to be excluded from coverage under the act. Employees of a corporation should not be regarded as acting for another when representing their employer within the scope of their employment. Thus, the licensing and registration requirements of the act do not apply to employees of corporations or other business entities when those individuals act to acquire or dispose of property on behalf of their employer. We emphasize, however, that a corporation actually engaged in real estate as a business must require their employees who act as agents for third parties to be licensed as real estate brokers or salespersons, or if they are acquiring, transferring, or disposing of easements or right-of-ways, to register under the provisions of section 9A.

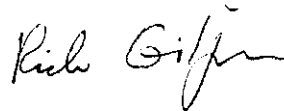
³We use the phrase, "business of real estate" to mean a person acting as an agent for a third party rather than as a principal in acquiring or disposing of property. "Principal" is defined as "a person who has controlling authority or is in a leading position," and "the person from whom an agent's authority derives." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 935 (1983).

S U M M A R Y

The licensing and registration requirements of article 6573a, V.T.C.S., the Real Estate License Act, do not apply to employees of corporations and other business entities who act to acquire or dispose of property on behalf of their employer.

Employees of a registered corporation or business entity who act as agents in third party transactions may not lawfully perform the acts listed under section 9A of article 6573a, V.T.C.S., unless they are licensed, exempt, or registered under the act.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee