



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

A-60467

LLH

June 24, 1936

The Chairman,  
Federal Home Loan Bank Board.

COMP. GEN.

FILE COPY

Sir:

Your letter of May 4, 1936, requests further consideration of the decision of this office April 10, 1935, relative to certain employees of the Home Owners' Loan Corporation acting also as fee attorneys for home owners to examine and report upon titles and close loans at the expense of the home owner.

A statement submitted with your letter is headed "Claims of B. L. Kessinger and M. Carlisle Minor" and is in part as follows:

"In the lending operations of Home Owners' Loan Corporation it is necessary that the borrower from the Corporation incur considerable legal expense in proving to the Corporation that he holds good title to his property, the security for the proposed loan. For this purpose he must employ an attorney to check the title to his property. Such an attorney, however, must be one upon whom the Corporation can rely. For that reason the Corporation designated throughout the United States attorneys whom it would recognize for such purpose. These are called fee attorneys.

"Mr. B. L. Kessinger and Mr. M. Carlisle Minor were acting as such fee attorneys approved by the Corporation during October, 1934. At the same time they were acting as salaried attorneys for Home Owners' Loan Corporation, Mr. Kessinger being employed at a monthly salary of \$125 and Mr. Minor at a monthly salary of \$175. In the employment of these men the Corporation knew that they were employed on a fee basis by the borrowers and took this fact into consideration in the fixing of their salaries. They performed the services for which they were employed on a certain salary basis and spent the usual hours required by the Corporation in its employment to earn their salaries.

"The duties of a fee attorney approved by the Corporation, and accordingly the duties of Kessinger and Minor as such, were to draw up abstracts of title on properties of borrowers of the Corporation,

examine the same and certify as to the title held by the borrowers. It was likewise their duty when called upon to close the loan and assure the Corporation that it obtained a first lien. Although this work is performed for the borrower and paid for by the borrower, it is nevertheless necessary that the work be performed by a person whose legal experience is such that the Corporation can rely on his work. Inasmuch as the Corporation will suffer in the event of any errors in judgment, the fee attorney is not working contrary to the interests of the Corporation but must be engaged in protecting the Corporation's interests.

"In their work as salaried attorneys, Kessinger and Minor were under the supervision of the District Counsel. It is the function of the District Counsel to review and supervise the work of the fee attorneys in examination of title and closing of loans. Mr. Kessinger and Mr. Minor, as Assistant District Counsel, assisted in this work. The District Counsel, however, reviewed all abstracts of Kessinger and Minor made by them as fee attorneys and wrote an opinion with reference to the same for submission to the State Office. In other words they reviewed abstracts of other fee attorneys and the District Counsel reviewed theirs. The District Counsel likewise distributed all cases for the examination of title and closing. There was, therefore, no conflict between duties of these men as salaried attorneys and fee attorneys."

In the decision of April 10, 1935, A-60467, it was said -

"While this office cannot agree with your General Counsel that the authority granted the Corporation by the Home Owners' Loan Act of 1933, to 'determine its necessary expenditures' resolves the doubt in the matter, apparently the approving of such attorney-employees as fee attorneys was in error as your General Counsel states such practice is contrary to the Corporation's policy - it would clearly be contrary to sound public policy - and if there is no more involved than such error in the Corporation's action in approving such attorney-employees as fee attorneys it is not believed the error on the part of the Corporation in merely approving need bring into question the status of the employees or their right to compensation as such. However, if such attorney-employees actually practiced as attorneys for applicants for loans there appears involved not only their employment status and right to compensation from public funds but all actions taken by them on behalf of the Corporation respecting or having any relation to applications for loans by their clients."

In the statement submitted with your letter it is argued that it is common commercial practice, particularly with mortgage and insurance companies, for the mortgagee's attorney to act for, and to be paid by, the mortgagor in connection with the examination of title and the negotiation of loans, and that the Home Owners' Loan Corporation, although a Government agency, is authorized, by virtue of its corporate form, to follow commercial practices not available to other Governmental agencies.

Granting that a Government corporation may have more latitude in the conduct of its affairs than other Governmental agencies, such latitude in any case is at least bounded by the dictates of sound public policy, and, irrespective of form, being a public agency, public policy would seem to require standards of conduct not only above reproach but above the suspicion of reproach in the public mind. For salaried attorneys of the Home Owners' Loan Corporation to be permitted to charge and collect fees for personal services to applicants in connection with the securing of loans from the Corporation suggests serving two masters and raises too many implications of possible conflict of interests to be without objection by this office.

Your submission is answered accordingly.

Respectfully,

(Signed) J. R. McGarl

Comptroller General  
of the United States.

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