

MISSOURI REAL ESTATE COMMISSION
ACT: -

1. Salesman's license cost cannot be transferred to broker's license.
 2. Commission is bound by decision of court.
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April 15, 1942

Missouri Real Estate Commission
Jefferson City, Missouri



Attention - Mr. J. W. Hobbs, Secretary.

Gentlemen:

We are in receipt of your letter of April 6, 1942, in which you request an official opinion on the following questions:

I

"If a person applies and is granted a salesman's license and after working in a brokers office for a few months of the year the salesman decided to apply for an individual brokers license said applicant requests that the fee of \$2.50 for the salesman's license which he has received and used for part of the year be applied to the fee of the individual brokers license which fee is \$5.00 annually. The salesman's license serves one purpose namely, licensee is working for some one else however the brokers license demands more responsibility and allows licensee to employ others?"

The section of the statute applicable to this question, is Section 9 of the Missouri Real Estate Commission Act, Page 428, Laws of Missouri, 1941, which reads as follows:

"The annual fee for a real estate broker's license shall be \$5.00. When issued to a copartnership, association or corporation, there shall be an additional annual fee of \$2.00 for each member or officer who actively participates in the real estate business. The annual fee for such real estate salesman's license shall be \$2.50. Every license granted under this act and every renewal thereof shall expire on the 31st day of December in the year in which said license is issued. The commission shall issue a new license for each ensuing year in the absence of any reason or condition which might warrant the refusal of the granting of a license, upon receipt of the written application of the applicant and the renewal fee herein required."

Under the above section there is no provision made for the cancellation of the license and the repayment of the unused portion of the time for which the person is licensed. In some instances, where state licenses are issued under other acts, such as the Liquor Control Act, a provision is made for the repayment of the unused term of the license, when it is surrendered. We find no such provision in the Missouri Real Estate Commission Act.

CONCLUSION

It is, therefore, the opinion of this department that the real estate salesman's license cannot be applied as partial payment on a broker's license.

II

"If a licensee has been sued by a complainant in the civil courts in St. Louis or Kansas City and judgment was decided in favor of the licensee. The complainant then files a complaint with the Missouri Real Estate Commission requesting that an applicant or a licensee be denied a license or same revoked if he is already licensed --- Cannot the Commission inform the complainant that the matter had been tried in a civil court and judgment decided in favor of the applicant or licensee and therefore not a matter to be brought before the Missouri Real Estate Commission. ---- It is of course taken for granted that the applicant or licensee has met every requirement of the law in requesting or securing a license from the Commission."

The section applicable to the above question, is Section 11, of the Missouri Real Estate Commission Act, Page 429, Laws of Missouri, 1941, which partially reads as follows:

" * * * If the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the commission shall determine that any licensee is guilty of violation of any of the provisions of this act, his or its license shall be suspended or revoked. The findings made by the commission acting within its power shall, in the absence of fraud, be conclusive but the cir-

cuit court of the county in which said hearing is had or where such licensee or applicant resides shall have power to review said proceedings on writ of certiorari, or other proper proceedings, provided, that application is made by the aggrieved party within thirty days after the determination of the commission; or said hearing may be by mandamus brought in a court of competent jurisdiction and such court shall make such other orders in respect thereto as justice may require, and the return of the commission to any writ issued by said court shall be accompanied by a transcript of the papers filed and proceedings had before said commissioner duly certified. All expenses and costs of proceeding and hearing under this section shall be assessed and paid as costs are assessed and paid in any court of record."

Under the above partial section the determination of the Commission that any applicant is not qualified, may be certified by the applicant to a court of competent jurisdiction, providing the application is made within thirty days after the determination of the Commission. If the court of competent jurisdiction should grant the license on the review, the Commission is bound by the decision, but, after the license has been granted by the court of competent jurisdiction, the Commission has the power to suspend, or revoke, the license, under Section 10, of the Missouri Real Estate Commission Act, Page 428, Laws of Missouri, 1941, if the salesman or broker has violated any of the provisions therein, after he has been granted a license.

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CONCLUSION

It is, therefore, the opinion of this department that if a license has been received by an applicant, by reason of a decision of a court of competent jurisdiction, this decision is binding upon the Missouri Real Estate Commission, but, if after the license has been granted by the court of competent jurisdiction, and the licensee commits any of the acts as set out in Section 10, of the Missouri Real Estate Commission Act, supra, then the Commission, upon a complaint, and by complying with Section 11 of the Missouri Real Estate Commission Act, may revoke, suspend, or deny, a license to the licensee.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
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