

REAL ESTATE COMMISSION: Fees of unused license cannot be refunded; a person who holds himself out as a real estate dealer in this state must qualify and apply for a license.

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June 10, 1943



Mr. J. W. Hobbs  
Executive Secretary  
Missouri Real Estate Commission  
Jefferson City, Missouri

Dear Sir:

Your request for an opinion, dated June 8th, 1943, in reference to changes of types of licenses, and real estate brokers who deal exclusively in Kansas property, has been received.

I

Your first question reads as follows:

"We have several types of licenses, namely, Brokers, Salesmen, Corporations, Co-partnership, Associations and Members of Corporations, Co-partnerships and Associations, and if a person applies and is issued one type of license in a calendar year and later in the year desires to apply and be issued a different type of license can the fee paid for the first license apply to the cost of fee for the second license desired, which would be a different type of license? Also should the licensee return his certificate and pocket card of the first license issued when applying for a different type of license."

The fees and terms of licenses are set out in Section 9 of the Missouri Real Estate Act, Laws of Missouri, 1941, page 428. This section 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."

We find no statutory authority in this section which would authorize the Real Estate Board in applying the unused balance of a license fee from one form of license as a payment on another form of license as therein set out. The rule as to the refunding of license fees is set out in 37 Corpus Juris, Sec. 130, page 255, which reads as follows:

"Refunding or Recovering Fees Paid--1. In General. Where the fee or tax which has been paid was not illegal or unauthorized, it cannot be recovered back, irrespective of whether its payment was voluntary or involuntary, and although the method of its collection was irregular.

"Termination of license. The unearned portion of the money paid for a license

may be recovered by the licensee, where the license has become inoperative by acts or circumstances over which he has no control and without his volition, as where he is deprived of his license by a statute or ordinance which prohibits the occupation for which the license was obtained, and in some jurisdictions this rule is prescribed by statute. But this rule does not apply where the license becomes ineffective through the licensee's act in voluntarily abandoning the only place where it could be lawfully exercised, or, in the absence of statute, in voluntarily surrendering the license, or where the license has been rightfully and properly revoked or canceled.

"A sum deposited with an application for a license may be recovered on the failure or refusal to issue a license, without any fault on the part of the applicant."

The Supreme Court of this state has followed that rule in reference to the refunding of license fees paid by liquor dealers, which is synonymous to a license fee paid by brokers and salesmen under the Real Estate Act.

Following this rule the Supreme Court, in the case of *Neumer v. Jackson County*, 197 S. W. 139, Par. 3, said:

"The only other theory which might be urged as a basis of recovery is that a dramshop licensee upon the surrender of his license is entitled to a rebate for the unexpired portion of the license. It would appear, however, that the great weight of authority is to the effect that a recovery cannot be had under those conditions, in the absence of a statute so authorizing.

"The rule here applicable is stated in 15 R.C.L. 315, as follows:

"'It seems to be well settled that ordinarily a licensee does not, on the voluntary surrender of his license, become entitled to the return of the licensee fee, in proportion to the unexpired term, in the absence of statutory enactment to the contrary.'

"To the same effect are the following authorities: Joyce on Intoxicating Liquors, Sec. 330; 1 Woollen & Thornton on the Law of Intoxicating Liquors, Sec. 500; case note in 16 L.R.A. (N.S.) loc. cit. 515, and cases therein cited."

Since we are holding that the fee of one license, which is unused cannot be applied to a second license to be applied for, the Real Estate Board would have no authority to ask the licensee to return his certificate and pocket card of the first license.

#### CONCLUSION.

It is, therefore, the opinion of this department that if a person applies for and is issued one type of license in a calendar year and later in the year desires to apply and be issued a different type of license the fee paid for the first license cannot be applied to the cost of the fee for the second license which would be a different type of license.

It is further the opinion of this department that the Real Estate Board has no authority, by statute or otherwise, to compel a licensee to return his certificate and pocket card of the first license issued when applying for a different type of license.

II

Your second question reads as follows:

"Also may we request an opinion in regard to a person that resides in Kansas City, Missouri, and has an office in that City and sells property in the State of Kansas, but does not sell Missouri property. Would such a person have to qualify and apply for a Missouri license?"

Section 1 of the Missouri Real Estate Act, Laws of Missouri, 1941, reads as follows (page 425):

"After January 1, 1942, it shall be unlawful for any person, copartnership, association or corporation, foreign or domestic, to act as a real estate broker or real estate salesman, or to advertise or assume to act as such without a license first procured from the Missouri Real Estate Commission."

Section 3 of the same Act, page 425, partially reads as follows:

"A real estate broker is any person, copartnership association or corporation, foreign or domestic, who advertises, claims to be or holds himself out to the public as a LICENSED real estate broker or dealer and who for a compensation or valuable consideration, as a whole or partial vocation, sells or offers for sale, buys or offers to buy, exchanges or offers

to exchange the real estate of others; or who leases or offers to lease, rents or offers for rent the real estate of others; or who loans money for others or offers to negotiate a loan secured or to be secured by a deed of trust or mortgage on real property. A real estate salesman, within the meaning of this act, is any person, who for a compensation, or valuable consideration becomes associated, either directly or indirectly with a real estate broker to do any of the things above mentioned, as a whole or partial vocation. \* \* \* \* \*

In setting out the definition of who should be required to apply for licenses as a real estate broker or a real estate salesman, no mention is made as to the location of the property involved in the matter, but they merely say, and refer all through Section 3, as to the dealing in real estate of others and negotiating loans of money for others. Since in your request you state that the person who resides in Kansas City, Missouri, and has an office in that city, and sells property in the State of Kansas, is holding himself out in the State of Missouri as a real estate dealer, then, under Section 3, he should be required to qualify and apply for a Missouri license.

#### CONCLUSION.

It is, therefore, the opinion of this department that, if a person resides in Kansas City, Missouri, and has an office in that city, where he holds himself out as a real estate dealer, but sells property in the State of Kansas, and does not sell Missouri property, he should qualify and apply for a Missouri Real Estate license:

Respectfully submitted,

APPROVED:

W. J. BURKE  
Assistant Attorney-General

ROY McKITTRICK  
Attorney-General

WJB:CP