

**OPINION  
63-109**

July 22, 1963            (OPINION)

DEPARTMENT OF PUBLIC INSTRUCTION

RE: Correspondence Schools - Lack of License

This is in reply to your letter of July 18, 1963, in regard to licensing of trade and correspondence schools. You call our attention to Chapter 15-50 of the North Dakota Century Code. You inform us that out of state trade and correspondence schools are continually allowing their solicitors to come into our state and solicit students before the school secures a license.

You ask us to give an opinion as to whether the application form which is generally written in the form of a contract can be considered as legally binding when the school does not hold a license at the time the student signs this contract and pays his enrollment fee.

Looking to 33 American Jurisprudence 386, Licenses, section 70, we find:

Section 70. STATUTES OR ORDINANCES EXPRESSLY PROHIBITORY. It is well settled that where a licensing statute or ordinance is enacted for the protection of the public, and expressly prohibits under penalty, and there is nothing in the language which indicates an intent to limit its scope to the exaction of a penalty, or to grant that a contract may be lawful, and there is nothing in the subject matter to justify a presumed intent on the part of the lawmakers to relieve the wrongdoer from the ordinary consequences of a forbidden act, a contract made without having procured the required license creates no right of action which a court of justice will enforce. Moreover, it has been held in a number of jurisdictions that where a statute or ordinance declares that it shall be unlawful for perform certain acts thereby prohibited without a license, and imposes a penalty for violation, contracts for the performance of such acts are necessarily void and incapable of enforcement, and this without reference to whether the object of the act is to protect the public or merely to raise revenue. There is some authority to the effect, however, that failure to procure a license under a statute or ordinance expressly prohibiting the carrying on of a business without a license, and imposing a penalty for operating without the same, does not invalidate a contract, where the statute or ordinance is in fact merely a revenue measure and was not enacted as a police measure and does not involve public policy or morals.

It has been held that a statute prohibiting every person without a license from practicing a profession renders the contract of an unlicensed person for professional services unenforceable, even though the statute imposes no penalty for

its violation."

Looking to said Chapter 15-50, we believe it obvious that same does require qualification as to advertising, methods of instruction, equipment and housing provided, qualifications of teachers, etc. It expressly provides in section 15-50-02 of the North Dakota Century Code that:

Every private trade or correspondence school, before offering any instruction, first shall procure a license from the executive officer."

It is therefore our opinion that the application forms, generally written in the form of a contract, cannot be considered as legally binding when the school does not hold a license at the time the student signs the contract and pays his enrollment fee.

HELGI JOHANNESON

Attorney General