

**OPINION
58-130**

January 27, 1958 (OPINION)

LICENSES

RE: Real Estate Salesman - Change of Residence

We have received your letter of January 21, 1958, in which you requested an opinion of the license fees to be paid in the following described situations which I quote:

"1. A real estate salesman, employed by a corporation, pays his fee of twenty dollars and receives his license as a real estate salesman. Later he becomes an actively engaged officer of the corporation, by which he was employed; now he requests an individual license as an officer of the corporation and the fee is twenty-five dollars."

"2. An officer of a corporation has been licensed along with all other requirements and fees as to the Law governing North Dakota State Real Estate Commission, Chapter 293 of the 1957 Session Law. This officer dissolves his association with this corporation."

The Real Estate Commission is an administrative agency and as such it has only those powers specifically accorded it by the statutes or those necessarily implied. The statutes authorize the collection of certain license fees which are classified into three types: brokers, salesmen and renewal. Each is to be collected in certain situations prescribed by the statute. There appears to be no provisions for the refund of license fee. Furthermore, a license fee is in the nature of a payment made for a privilege - in this case, payment for the privilege of carrying on the real estate business.

Your question in connection with situation No. 1 is whether you may charge an extra fee of five dollars upon return of the salesman's license and then issue the twenty-five dollars broker's license, or whether the full twenty-five dollars must be charged. It is the opinion of the Attorney General's Office that in situation No. 1 you must require the payment of a twenty-five dollars fee. You have no authority to compromise that amount merely because the individual no longer chooses to exercise the privileges he obtained in receiving his salesman's license.

Your question in connection with situation No. 2 is whether under those circumstances either the corporation or the officer is entitled to a refund. It is the opinion of the Attorney General's Office that neither party is authorized by statute. The situation is not unlike that which exists when an individual attempts to obtain a refund on his hunting license after he decided not to go hunting.

Your third question, which is also based upon situation No. 2, is whether that individual if he goes into the real estate business by himself or associates with another real estate corporation will be

required to acquire a new license at the full amount of the fee. It is the opinion of the Attorney Generals' Office that the man in situation No. 2 will not be required to purchase a new broker's license though he has changed his business association. While a new law provides for such situations in the case of salesmen, it apparently makes no provision for brokers, but since in the case of brokers the license apparently runs to the individual, there appears to be no reason why a new license should be required merely because of the change in business associations.

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Attorney General