

tion of the districts affected or the status of their schools and obligations connected therewith.

Third, there is no provision for delayed transfers of school territory or for transfers to become effective in the future. When circumstances are such that there devolves upon a county board of education the mandatory duty to make a transfer of school territory from one district to another, such transfer should be made within a reasonable time after the mandatory duty attaches.

Fourth, inasmuch as the petition filed with the Board of Education of the Sandusky County School District by 75% of the resident electors of a portion of Rollersville Rural District asks that said territory be transferred to Rising Sun School district which, is a village district of an adjacent county, and which transfer the Sandusky County Board of Education would have no authority to make in any case, the filing of said petition vests no jurisdiction in the Sandusky County Board of Education to act and it not only could not be required to make such transfer by an action in mandamus but might be enjoined from making such transfer if it attempted so to do.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1259.

REAL ESTATE BROKER'S LICENSE—NOT REVOKED—MAY BE RENEWED UPON APPLICATION AND FEE OF FIVE DOLLARS.

SYLLABUS:

A real estate broker's license, not suspended or revoked, may be renewed after the expiration thereof, upon application therefor, accompanied by the fee of five dollars.

COLUMBUS, OHIO, November 14, 1927.

HON. CYRUS LOCHER, *Director, Department of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of November 9, 1927, as follows:

“The real estate license law, Section 6373-38, provides that ‘each license issued under this act shall expire on the 31st day of December of the year in which it is issued; but each license shall be renewed upon application therefor, without recommendation, examination or inquiry. * * *’

Section 6373-39 provides that the fees for real estate broker's license shall be \$10.00 for the first year and \$5.00 for each renewal thereof, etc.

In response to our request, you gave us Opinion No. 774, saying that the section is plain and unambiguous and clearly demonstrates that each license expires annually and that the bond required by Section 6373-35 must be executed for the period of one year and a new one for each renewal of a license.

The question now has arisen as to when application for a renewal of a license must be made. The holder of a broker's license makes application on January 15, 1928, that is subsequent to the time of the expiration of his 1927 license. May the Board of Real Estate Examiners renew his 1927

license, and is he to pay a fee of \$5.00 for the renewal? Or, is it necessary, in order for a holder of a broker's license to have his license renewed, to make application to have the same renewed before the 1927 license expires? Some one has advanced the opinion that since all the licenses now issued expire on the 31st day of December, 1927, that on January 1st the holder of a 1927 license has nothing to renew, and that said holder of a 1927 license will then be in the same position as one who has not had a license, and in order to get a new license he must again make application for a broker's license and pay a fee of \$10.00.

If, in your opinion, the Board may renew a license in 1928 when application for renewal is made subsequent to December 31, 1927, may the Board legally renew a license for the year 1929 of a license that had been granted in 1927 and no application has been made to renew the same for the year 1928?

The purpose of this request is to definitely inform the Board as to what fees should be collected for renewals."

While it is undoubtedly true that the initial license issued to a real estate broker expires on the 31st day of December of the year in which it is issued, it does not necessarily follow therefrom that a renewal of such license may not be had a day, a month or a year after the expiration of the original license. Without quoting in full all the pertinent sections of the real estate broker's license law, it may be stated that Sections 6373-29, et seq. of the Code provide for applications for original license, which must be accompanied by a recommendation of two resident freeholders of the county in which the applicant resides, certifying that he is honest, truthful and of good reputation and recommending that he be admitted to the examination. Upon being satisfied as to the honesty, truthfulness and good reputation of the applicant, the board shall admit the applicant to the examination, which deals with the principles of real estate practice and the canons of business ethics pertaining thereto. There is authority to conduct the examination by questionnaire. Upon the successful passage of the examination, the applicant is issued a license.

Section 6373-39 provides as follows:

"The fees for licenses shall be as follows:

1. For a real estate broker's license, \$10.00 for the first year and \$5.00 for each renewal thereof. If the licensee be a corporation, an additional fee of \$2.00 for each officer other than the president thereof, and if it be a firm, an additional fee of \$2.00 for the second and each additional member thereof. A charge of \$1.00 shall be made for duplicate real estate broker's license.
2. For a real estate salesman's license, \$2.00 for the first year and \$1.00 for each renewal thereof.

In all cases the fee shall accompany the application for license or renewal. If an applicant or other person admitted to an examination for a real estate broker's license fails to pass the examination to which he is admitted, he shall be entitled to be admitted to further examinations."

It is to be noted that the fee for the original license is twice as much as that provided for renewals. The difference between such fees may be attributed to the fact that the duties of the board with respect to the original license are much greater than those with relation to a renewal. With respect to the renewal of a license, Section 6373-38 of the General Code provides as follows:

"Each license issued under this act shall expire on the thirty-first day of December of the year in which it is issued; but each license shall be renewed upon application therefor, without recommendation, examination or inquiry, excepting as provided in Sections 15 to 20, both inclusive, of this act. (G. C. Sections 6373-39 to 6373-44)."

From this section it is apparent that, the original applicant having qualified and secured a license to conduct the business of a real estate broker, it must be assumed that those qualifications continue, for otherwise the statutes would make provision for annual examination. Ordinarily, therefore, the effect of the expiration of the license is to extinguish the right to do business, but it does not in my opinion require new proof of the qualifications of the applicant.

The statute being silent as to the date when a renewal may be made, I do not feel warranted in stating that it must be effected prior to the date of the expiration of the original license. An examination of the various sections of the General Code with relation to the licensing of other occupations and professions discloses that the legislature in this instance has failed to be as specific as is usual. For example, in the case of dental hygienists, after the original qualification by examination, the licensee is required to pay annually, on or before January 1st of each year, a registration fee. If he fails to pay within that time, the license may be revoked or the board may reinstate upon payment of a larger fee. Similarly, in the case of dentists, after the original qualifications, the applicant must pay an annual registration fee on or before December 31st of each year, and in case he fails to do so a fine of \$5.00 is imposed. If he suspends his practice, he may be reinstated upon the payment of a larger fee. Also, in the case of embalmers, after the original examination, the license must be renewed every five years, but an applicant who fails to pay may, within six months after the expiration of the license, have his license renewed without examination upon the payment of a larger fee. There are several other instances in the Code in which it is shown that the legislature is ordinarily more specific on the subject than it has been in this instance.

You will note from what I have said that the ordinary practice is to impose a penalty in case of failure to renew within the specific date fixed by the statute and, in at least one instance, a specific time limit is placed and the inference may be drawn that, after such time, the applicant must submit to a new examination. The larger fee being in the nature of a penalty and the rule being that penalties are not favored in law, in my opinion the requirement of the larger fee cannot be read into the statute in this instance in the event that the licensee fails to renew prior to the date of the expiration of his license.

As you suggest, it may be argued that the license having expired, there is nothing to renew. I do not feel, however, that such a contention is justified. Webster's International Dictionary contains the following definition of the word "renew," among others: "To restore to existence." That is what is done in the case of the renewal of the license after it has expired. The license, being granted only after examination of the applicant, is evidence of his qualification as well as his authority to do business. The authority to do business clearly expires with the expiration of the license, but the qualifications may hardly be said to cease.

Having reached the conclusion that a license may be renewed after its expiration, the next inquiry is whether there is any limitation upon the time within which such renewal may be made. The statute being silent on this subject, I am compelled to the conclusion that there is no definite limitation. It is quite apparent, however, that where a long period of time has intervened between the expiration of a license

and the application for a renewal, the qualifications of the individual might have changed substantially and he might have been guilty of acts which would warrant the board in refusing to make the renewal. You will observe that Sections 6373-42 to 6373-46, inclusive, provide for the investigation by the board upon its own motion of the conduct of any licensee or any applicant for the renewal of a license. The board is authorized to conduct an inquiry and, if it is satisfied that the applicant has been guilty of conduct justifying refusal to renew, it may take such action. The action of the board is reviewable by the courts.

Section 6373-33 of the Code is as follows:

“The state board of real estate examiners may make such reasonable rules and regulations as it may deem necessary, relating to the form and manner of filing applications for license, the issuance, suspension and revocation of licenses and the conduct of hearings as provided for in this act (G. C. Sections 6373-25 to 6373-51). The board may hear testimony in matters relating to the duties imposed upon it by law, and the president and secretary of the board may administer oaths. The board may require such other proof as it may deem advisable of the honesty, truthfulness and good reputation of any person named in an application for a real estate broker's license, before admitting the applicant to the examination or issuing a license as the case may be.”

Under this section I feel it would be within the power of the board to adopt a rule requiring that, unless applications for renewals of license are made within a reasonable time to be prescribed by the board, renewals will only be granted after an inquiry which will satisfy the board that the applicant has not, in the intervening time, violated the law by acting as a broker. In such case, however, although an inquiry may be conducted, the application is still one to renew a license and not for the issuance of a new license. This being so, the fee payable would still be \$5.00.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1260.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE ROAD MACHINERY AND MATERIALS UNDER SECTIONS 7200 AND 7214, GENERAL CODE—AUTHORITY OF SAME COMMISSIONERS TO RESCIND LEGISLATION—CERTIFICATE OF FISCAL OFFICER, DISCUSSED.

SYLLABUS:

(1) *Under the provisions of Sections 7200 and 7214 of the General Code, county commissioners are authorized to purchase such machinery, tools, equipment, automobiles and materials as may be necessary to construct, reconstruct, improve, maintain or repair county roads, and the bridges and culverts thereon, by force account, and such board of county commissioners may rescind legislation authorizing the county surveyor to lease equipment and tools and to purchase such material as may be necessary to carry on work by force account, as provided in Section 7198 of the*