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1. PAWNBROKER—LICENSED, IN GOOD STANDING—MAY REMOVE BUSINESS TO ANOTHER LOCATION—SAME OR ANOTHER MUNICIPALITY—PROVISO, HE BECOMES RESIDENT OF MUNICIPALITY IN WHICH BUSINESS TO BE LOCATED, OR COMPLIES WITH SECTION 6339 G. C. AS TO APPOINTMENT OF AGENT FOR SERVICE OF PROCESS OR LEGAL NOTICE.
2. MUNICIPALITY WHERE PAWNBROKER'S NEW PLACE OF BUSINESS LOCATED, NOT ENTITLED TO ANY PART OF LICENSE FEE.

SYLLABUS:

1. A pawnbroker who has been duly licensed under the provisions of Section 6339, General Code, and who is in good standing thereunder, may, as a matter of right, remove his business to another location either in the same or in another municipality, provided he is or becomes a resident of the municipality in which his place of business is to be located or complies with the provisions of Section 6339, General Code, with respect to the appointment of an agent for the service of process or legal notice.

2. The municipality in which such pawnbroker's new place of business is located is not entitled to any part of the fee paid by the pawnbroker for his license.

Columbus, Ohio, March 25, 1946

Hon. Ernest Cornell, Chief, Division of Securities
Columbus, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"We respectfully request your opinion on the following question which has arisen under the Pawnbrokers Act of Ohio, Sections 6337 to 6346, inclusive, General Code of Ohio.

A. obtained a license in August, 1944, for the City of Massillon, Ohio. The annual fee of \$150.00 was paid in December, 1945, for the calendar year 1946. In February, 1946, licensee A. sold the business to B., who obtained a license from this Division upon application therefor and payment of the statutory fee of \$137.50 for the remainder of the calendar year 1946. A. now wishes to engage in the pawnbroking business in

the City of Alliance, Ohio, and requests that the Division endorse his license, heretofore issued for his old place of business in Massillon, to his new place of business in Alliance.

Query: Is a license issued under the Pawnbrokers Act limited to a place of business within the municipality for which the license was originally issued, or may a licensee secure, as a matter of right, a transfer to a place of business in another municipality without making an application for a new license and payment of a new license fee?

Section 6339-1, General Code, provides, in part:

'But in case of removal, the Commissioner of Securities *shall*, on application, endorse thereon a transfer to the new place of business, and from the time of such endorsement, the new place so designated shall be deemed the place designated in the license.' (Underscore ours.)

It would appear that the above cited provision of the General Code gives to the licensee a definite right to have the license transferred to another municipality. However, Section 6339, General Code, provides, in part, as follows:

'Fifty per cent of such license fee shall be for the use of the state, and fifty per cent shall be paid to the municipality, * * * in which the office of said licensee may be located. All such fees payable to municipalities or counties shall be paid as they accrue, by the State Treasurer, on vouchers issued by the State Auditor.'

The practice of this Division, in the past, has been that upon payment of the annual fee fifty per cent thereof is immediately distributed to the municipality. Does this provision for allocation of the fee modify the right of transfer as given by Section 6339-1? It should be remembered that the license is a personal license to the individual and is not transferable to another by assignment, or otherwise. Also, the question may involve an interpretation of the word 'removal' as used in Section 6339-1, General Code. The transfer of A's license to Alliance, without payment of a new fee, might unjustly enrich Massillon at the expense of Alliance."

In effect, your request raises two questions; (1) Whether the endorsement of a transfer of the license of a pawnbroker is mandatory, upon his removal to a different place of business, and (2) whether the municipality to which the pawnbroker removes his business is entitled to any part of the license fee provided by Section 6339 General Code.

That portion of Section 6339-1 General Code, which you quote, provides the answer to the first question raised. The word "shall" is usually interpreted to make the provision in which it is contained mandatory (see 37 O. Jur., 326, Statutes, Sec. 30; Crawford, Statutory Construction, Sec. 262) unless the context of the provision makes such interpretation inappropriate. There is nothing in the statutes with respect to the licensing of pawnbrokers (Secs. 6337 et seq.) which indicates that the Commissioner of Securities has any option in the matter of endorsing a transfer on the license of a pawnbroker who makes application therefor. It is noted, in connection with this question, that Section 6339, which governs the original issuance of the license provides :

"The commissioner of securities *is hereby authorized* to grant a license * * * to engage in the business defined and prescribed in Section 6338 of the General Code by the payment to him of a license fee * * *." (Emphasis added.)

and, further :

"The said license *shall be issued* by the commissioner * * *." (Emphasis added.)

It is apparent in the section just quoted that the permissive language "is hereby authorized" modifies the use of the word "shall" further in the section. However, in the matter of the endorsement of a transfer of a license in the event of removal, had the legislature intended the word "shall" to express permission rather than the imposition of a duty similar language to "is hereby authorized" could have been used, and no such language appears in Section 6339-1. There is nothing in Sections 6337 through 6346 General Code, which appears to place any limitation on the location in which a pawnbroker may be licensed to do business except the following language quoted from Section 6339 General Code :

"No license shall be granted to any person, firm, partnership, corporation or association not a resident of or the principal office of which is not located in the municipality or county designated in such license, unless, and until such applicant shall, in writing and in due form, to be first approved by and filed with the department of securities, appoint an agent, a resident, of the State of Ohio, and city or county where the office is to be located, upon whom all judicial and other process, or legal notice,

directed to, such applicant may be served; and in case of the death, removal from the State, or any legal disability or any disqualification of any such agent, service of such process or notice may be made upon the commissioner of securities."

And although the municipality in which the pawnbroker's office is located is entitled to fifty per cent of the license fee paid as provided in Section 6339, the license is in fact issued by a state officer on behalf of the state, rather than on behalf of the municipality. Also, no limitation appears in respect of the word "removal," as used in Section 6339-1. Therefore, provided the pawnbroker complies with that portion of Section 6339 last above quoted, or provided such pawnbroker is in fact a resident of the municipality to which he desires to remove his business, the removal of such business and the endorsement of a transfer of such license from one place of business in one municipality to another place of business in another municipality is a matter of right, irrespective of the rights of the respective municipalities from which and to which such license is removed.

The second question raised by your inquiry depends upon the interpretation, particularly, of that portion of Section 6339 which provides that fifty per cent of the license fee shall be paid to the municipality in which the office of the licensee is located and the portion thereof which provides for apportionment of such fee. The provision with respect to apportionment is as follows:

"The fee of one hundred and fifty dollars herein provided shall be apportioned at the rate of twelve dollars and fifty cents per month or fraction thereof until the first day of January following the date of the issuance of such license."

An argument could be made for the proposition that the apportionment of the fee to be paid by the licensee is for the purpose of determining the time at which the fee so paid "accrues," and is therefore to be divided between the city and the state. If the conclusion were reached that such accrual arose at the rate of twelve dollars and fifty cents per month, it would appear that the municipality from which a pawnbroker removed his business and received a transfer of his license would be entitled only to six dollars and twenty-five cents per month for the period such pawnbroker was actually engaged in business within such municipality and that the municipality to which he removed would be entitled to six dollars and twenty-five cents per month, for the remainder of the life of the

license. However, it appears that the provision for apportionment of fees is intended to modify the part of Section 6339 which provides for the payment of the fee to the Commissioner of Securities, and thus relieve the licensee from paying the full one hundred fifty dollars for a license obtained during the course of the year. If this were not the case, the statute would have to be interpreted to the effect that the licensee would be forced to pay the full fee of one hundred fifty dollars for a fractional part of the year, if his license were obtained during the course of such year. Such a result would obviously be unfair to the licensee, and it is illogical to suppose that the legislature so intended. Therefore, since it is concluded that the apportionment of fees is for the purpose of providing an equitable adjustment of the license fee with relation to its effective duration, it would seem that such apportionment does not apply to the accrual to the municipality of its portion of the license fee. Such fee "accrues" in that it becomes an obligation from the licensee to the commissioner of securities when the license is issued. And it is at that time that the municipality in which the licensee is licensed to do business as a pawnbroker becomes entitled to fifty per cent of the license fee.

There is no provision in the statutes involved which requires any additional license fee upon the transfer of the license from one place of business to another. There is likewise no provision for the refund by a municipality of any portion of the fifty per cent of the fee received if the pawnbroker ceases to engage in the business of pawnbroking within such municipality and no provision for any refund of any part of the fee to the pawnbroker, himself, in the event he discontinues his business during the effective period of the license, or in the event such license is revoked by the commissioner of securities under the provisions of Section 6339.

Therefore, it appears that the legislature, in enacting the licensing statutes, was not concerned with incidental unjust enrichment of a municipality at the expense of another municipality or otherwise.

In specific answer to your questions, therefore, it is my opinion:

1. A pawnbroker who has been duly licensed under the provisions of Section 6339, General Code, and who is in good standing thereunder, may, as a matter of right, remove his business to another location either in the same or in another municipality, provided he is or becomes a resident of the municipality in which his place of business is to be located

or complies with the provisions of Section 6339, General Code, with respect to the appointment of an agent for the service of process or legal notice.

2. The municipality in which such pawnbroker's new place of business is located is not entitled to any part of the fee paid by the pawnbroker for his license.

Respectfully,

HUGH S. JENKINS,
Attorney General