

52.

REAL ESTATE SALESMAN—CHANGE OF EMPLOYER AT END OF YEAR  
—FEE OF \$2 FOR NEW LICENSE REQUIRED.

*SYLLABUS:*

*A real estate salesman, duly licensed to act as a salesman for one broker, who changes his employment to another broker at the end of the year, must pay a fee of \$2.00 as for a new license to cover his employment with the second broker.*

COLUMBUS, OHIO, February 4, 1929.

HON. EDWARD D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“Will you please render an opinion upon the following:

A salesmans license was issued to A to act as a salesman for B, his broker, in 1928. This license expired December 31, 1928.

In 1929, A has been employed as a salseman for C, who holds a broker's license.

Question: Should a fee of \$1.00 or \$2.00 be collected for the issuing of a 1929 license to A?

The Board of Real Estate Examiners respectfully requests an early opinion.”

The statute is not at all clear on the point concerning which you inquire. Accordingly, in order to determine the question it is necessary to attempt to arrive at a conclusion from a discussion of the statutes covering the subject of real estate salesmen's licenses, with special attention to the details incident to securing the license and the purpose for which it is issued.

Section 6373-32 of the General Code provides as follows:

“Application for license as real estate salesman shall be made in writing to the state board of real estate examiners and signed and sworn to by the applicant, setting forth the period of time during which he has been engaged in the business, the name of his last employer, the name and place of business of the real estate broker then employing him or whose employ he intends to enter and such other information as the board of real estate examiners may require in the form of application prescribed by it. The application shall be accompanied by the recommendation of his employer, or intended employer, certifying that the applicant is honest, truthful and of good reputation, and recommending that the license be granted to the applicant. If the state board of real estate examiners is satisfied that the applicant is honest, truthful and of good reputation, it shall issue him a license as hereinafter prescribed.”

It is to be observed that the application must be accompanied by a recommendation of the employer or intended employer. Thus it appears that as an incident to the issuance of a salesman's license, there must be employment by a broker.

Section 6373-34 requires that the license show the name of the broker, by whom the salesman is employed and the license remains in the possession of the broker, by virtue of the provisions of Section 6373-36.

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).

The succeeding section (6373-39) is:

"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 licenses.

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 examination."

In the case you mention the salesman was licensed for the year 1928 to act as a salesman for B. He now changes his employment and becomes the salesman of C and applies for a 1929 license. Your specific inquiry is whether this should be treated as a renewal or as the issuance of a new license.

Since the provisions of law hereinbefore quoted make it manifest that the salesman's license is necessarily incident to his employment and it is the obvious intention of the legislature, as expressed in Section 6373-32, supra, to require each salesman to have the recommendation of his employer, I have reached the conclusion that, under the circumstances recited by you, the application must be treated as an application for a new license and, accordingly, the fee for the issuance thereof would be \$2.00.

The point is not specifically covered and might well be clarified by legislative action, but my conclusion is, in my opinion, the only one that could be reached, giving consideration to all of the provisions of the Code which are applicable.

In view of the conclusions which I have stated, I find it necessary to reconsider the question submitted to my predecessor and answered in his opinion to your predecessor, No. 1910, dated March 29, 1928. It was therein held that, where a real estate salesman has been licensed to act as a salesman for a broker and the license has been returned for cancellation, upon notice to the board of the employment of such salesman by another duly licensed broker, a new license for such salesman shall issue without charge. This conclusion was based upon an interpretation of Section 6373-36 of the General Code. Since, as I have before stated, the salesman's license is necessarily contingent upon an employment, a change of employment apparently requires the filing of an entirely new application with recommendations by the new employers and, accordingly, must be treated as a new application, for which a fee of \$2.00 must be charged. I am of the opinion that, whenever the change of employment may take place, the application for a salesman's license in the new employment must be treated as a new application and not as either a renewal or one entitled to be received and passed on without a fee therefor.

I accordingly feel that the opinion heretofore referred to should be reversed.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*