

## Opinion No. 54-6003

August 24, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Theodore Benninghoven Executive Secretary New Mexico Real Estate Board  
105 Fourth Street SW Albuquerque, New Mexico

{\*464} Your letter of August 13, 1954 requests the opinion of this office as to whether or not the New Mexico Real Estate Board has the power to renew a license which expired on December 31, 1953, without requiring the applicant to take the Real Estate examination as a prerequisite to the issuance of such a license. Section 9, Chapter 224 of the Laws of 1951, (Section 51-3217, N.M.S.A., 1941) requires that applicants for licenses to act as real estate brokers shall take an examination conducted by the Real Estate Board, and that upon passage of such examination shall be issued such licenses. Section 10 of the same chapter provides, in part:

"Every license shall expire on the thirty-first day of December of each year. The board shall issue a new license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of a license, upon receipt of the written request of the applicant, the annual fee therefor and bond as required."

It is our opinion that the Real Estate Board does have the power to renew a license subsequent to the thirty-first (31st) day of December of any particular year, and that, indeed the language of the statute requires it to issue a new license for an ensuing year upon receipt of the written request of the applicant, the license fee, and the bond required by the Real Estate Licensing law.

The inclusion in the section of the statute above quoted of the words "shall issue" makes it mandatory for the Board to issue such a new license upon the receipt of the aforesaid requisites therefor, ". . . in the absence of any reason or condition which might warrant the refusal of the granting of a license . . ."

The conditions and reasons which warrant the refusal of the granting of a license are set forth in Section 10 of the Real Estate Licensing law (Section 51-3221, N.M.S.A., 1941), and they do not include, as a ground for refusing the issuance of a new license to one who has already qualified for a previous license, and whose {\*465} license has not been revoked, the ground that such an applicant has waited until after the expiration of his previous license to apply for a new license. In this respect, in the absence of any of the enumerated reasons or conditions for refusing to grant a new license, it is our opinion that the Real Estate Board has no discretion to refuse to issue a new license for an ensuing year at any date when application is made for such a license. Greater New York Athletic Club vs. Wurster, 43 N.Y.S., 703.

Your letter indicates that it has been the practice of the Real Estate Board to refuse to grant new licenses without examination, when application therefor is not made prior to December 31st. It is our opinion that this construction of the statute by the Board is unwarranted and invalid, for the reason that statutory construction by an administrative agency in order to be given weight by the Courts must consist of interpretation of ambiguous statutes. 42 Am. Jur., "Public Administrative Law" Section 80, p. 400. It is apparent that Section 10 of the Real Estate License law is not such an ambiguous statute, since it requires the Board to issue new licenses upon the receipt of the enumerated requisites therefor, and in the absence of enumerated reasons or conditions for refusal, in mandatory language. We have been unable to find a single case from any jurisdiction which holds that a licensing board has the power to refuse to issue a renewal license without examination, in the absence of express statutory authority for such refusal.

It is fundamental that a licensing board can have no greater power with respect to granting or issuing licenses than is conferred upon it by statute.

"The power or duty of acting on applications and granting or issuing licenses usually is conferred by statute or ordinance on designated boards or officers, and the particular board or officer having the power or duty in a given case depends on the provisions of the act or ordinance by which the particular license is authorized or required. The designated board or officer has no powers or duties other than those which have been created by the statute or ordinance . . . the board or officer must administer the licensing statute in accordance with its provisions." 53 C.J.S. "Licenses" Section 37, pps. 629-630.

Moreover, it is fundamental that statutes imposing license requirements and license taxes are to be construed liberally in favor of the citizen and strictly against the government. "Statutes and ordinances imposing licenses and business taxes are generally to be construed liberally in favor of the citizen and strictly against the government, whether state or municipal . . ." 53 C.J.S., supra, p. 495.

Trusting that this will answer your questions fully, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General