

Opinion No. 241.**Abstracters—Certificate of Authority.**

HELD: Certificates of authority granted under provisions of Chapter 267, R. C. M., 1921, gave a vested right, which was not revoked by Chapter 319, R. C. M., 1935.

2. Holder of certificate under Chapter 267, R. C. M., 1921, whose plant is destroyed wholly or partially by fire, is not deprived of right to renewal of certificate under provisions of Chapter 319, R. C. M. 1935, because all or portion of records are lost by fire.

February 3, 1938.

State of Montana
Abstracters Board of Examiners
Anaconda, Montana

Gentlemen:

You have submitted the following statements of facts:

“A, holding a certificate of authority under the old law, which was renewed by the Board, under the new law loses a part or all of his abstract plant, by fire. Must he bring his

plant up to date, in order to obtain a certificate of authority from the Board? Or must the Board issue a temporary certificate of authority, upon his completion of 50% of his completion of his new abstract indices and plant? (Secs. 4139.9 and 4139.12.)

"Secondly. B holds a certificate of authority under the old law, having an incompleted plant and indices. Must he complete his plant within a given time, in order to be entitled to a certificate of authority under the new law? Or may he continue to operate his plant, and compile abstracts for fees, indefinitely, without bringing his plant up to date, and still be entitled to a certificate of authority, under the new law?"

Section 4139.7 provides:

"Registered abstracters defined. Registered abstracters, within the meaning of this act, shall comprise all persons who shall, on the first day of March, 1931, be in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the State of Montana under the provisions of Section 4140 of the Revised Codes of Montana, 1921, and who shall obtain a certificate of registration as hereinafter provided, or persons who shall be granted certificates of registration by the said abstracters board of examiners after the passage of this act."

Section 4139.9 provides:

"Registration of abstracters without examination. Any person, who, on the first day of March, 1931, is in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the State of Montana under the provisions of Section 4140 of the Revised Codes of 1921, and who shall make application to the abstracters board of examiners prior to the expiration of said certificate of authority, shall upon the payment of a fee of five dollars, be issued a certificate of registration, without examination, under such rules as may be provided by said board."

The first paragraph of Section 4139.12 provides:

"No abstract books or indices required under certain conditions. Any person, firm or corporation not having the abstract books or indices as required by Section 4139.1, and who, upon the first day of March, 1931, is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the State of Montana pursuant to Section 4140 of the Revised Codes of 1921, and who shall make application to said board prior to the expiration of such certificate of authority, and who shall comply with the other requirements hereof providing for a registered abstractor, bond and other provisions, shall, upon the payment of five dollars as is herein provided, be issued a certificate of authority under the provisions of this act."

Both persons referred to as A and B in your letter hold certificates to engage in the abstract business pursuant to rights acquired under Chapter 267 of the 1921 Revised Codes of Montana. That chapter did not require an abstract plant, records, or indices, in order to engage in the abstract business and compile abstracts. Persons licensed to engage in the abstract business under Chapter 267, supra, had acquired a vested right to continue in the business upon and after the enactment of Chapter 319 of the 1935 Revised Codes of Montana. Such right, being a vested right, is protected by the Constitution of the State of Montana and can not be disturbed by new legislation, and the legislature, recognizing the existence of a vested right, expressly provided for such character of business already established in Chapter 319. The legislature, in the enacting of said Chapter 319, did not see fit to legislate in relation to a situation such as you have outlined, and, therefore, it is my opinion that you should grant to said persons a certificate of authority to engage in the abstract business, subject to their complying with other requirements, such as securing and filing a bond.