

## Opinion No. 57.

Licenses—Bonds—Transfer—Certificates—Livestock Market, Licensing of.

**Held:** A license or certificate required by statute for the operation of a business, trade or profession, is a personal privilege and may not be transferred to another who purchased such business during the period for which such license or certificate was issued. A bond furnished under the provisions of a statute which provides the conditions thereof, may not be transferred to another after the effective date of a statute repealing the former and providing different conditions.

July 18, 1945.

Mr. Paul Raftery, Secretary  
Montana Livestock Commission  
State Capitol  
Helena, Montana

Dear Mr. Raftery:

You have called my attention to Chapter 193, Laws of 1945, which repealed Chapter 52, Laws of 1937, relating to the licensing of livestock markets, and request my opinion relative to whether a license or certificate issued under the provisions of Chapter 52 which does not expire until May 1, 1946, may be transferred to a purchaser of the business covered by such license or certificate; also whether the bond given by the licensee may likewise be transferred.

While Chapter 193, Laws of 1945, is an entirely new act dealing with the same subject and specifically repeals the former act, it is essentially similar in many of its provisions. However, it is to be noted that Section 7 of Chapter 193, which requires the filing of a bond, contains new conditions of such bond different from the former act.

Chapter 193, Laws of 1945, becomes effective July 1, 1945.

It is generally held that a license or certificate being a personal privilege may not be transferred or assigned to another. (17 Ruling Case Law 465; 37 Corpus Juris 243; 33 American Jurisprudence 330.)

In the case of *Shannon v. Esbeco Distilling Corporation*, 275 Ky. 51,

120 S. W. (2d) 745, the corporation owned a distillery plant and had paid the statutory annual license fee of one thousand dollars for two years. During this period, it leased its plant to another corporation which was required to and did pay the same license fees, and brought suit to recover the fee paid. The lessee contended that the statute imposing the license contemplated the imposition of such license fee upon each and every such plant and not the intention to cause a lessee of such plant to pay such fee. The state contended that the fee imposed by the statute is upon the person exercising the privilege conferred thereby and restricted to the person specified; that such permits under the statute and the common law are not transferable or assignable and not available to any person other than the one specified in the permit.

The Supreme Court of Kentucky, in upholding the contentions of the state, said:

"A permit granted to the owner could not be assigned or transferred to another. (Citing the statute). Apart from the statute it is a general rule that a license being a personal privilege cannot be assigned or transferred." (Citing 17 R. C. L. 475; 37 C. J. 243.)

Chapter 193, Laws of 1945, as did Chapter 52, Laws of 1937, requires the licensee to furnish a bond. The statute sets out the conditions of such bond. Hence, every person who is granted a license or certificate after the effective date of Chapter 193, Laws of 1945, must furnish a bond containing the conditions required by Section 7 of the act. Inasmuch, therefore, as the purchaser of the business in the instant case will be required to obtain a new license or certificate and pay the required fee therefor as provided by Chapter 103, such purchaser will likewise be required to furnish a new bond containing the conditions required by Section 7.

It is therefore my opinion:

1. That a license or certificate required by statute for the operation of a business, trade or profession, is a personal privilege and may not be transferred to another who has purchased such business during the period for which such license or certificate was issued.
2. That a bond furnished under the provisions of a statute which provides

the conditions thereof, may not be transferred to another after the effective date of a statute repealing the former and providing different conditions.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General