STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92067

STATE OF NEBRASKA
OFFICIAL
MAY 4 1992
DEPT. OF JUSTICE

DATE: May 1, 1992

SUBJECT: Collection of Fees Upon Appraiser's Transfer From Transitional License Status to License Status

REQUESTED BY: Marilyn Hasselbalch, Director
Nebraska Real Estate Appraiser Board

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

The Nebraska Real Estate Appraiser Act ("Act"), Neb. Rev. Stat. §§ 76-2201 to 76-2250 (Supp. 1991), authorizes issuance of a transitional license to appraisers who meet the experience and testing requirements for licensure but have not met the educational requirements, and to appraisers who meet the educational and testing requirements for licensure but have not completed the experience requirements. § 76-2217.02. Transitional licenses are valid for one year, a period during which transitional licensees are to fulfill the educational or experience requirements they are lacking for full licensure. § 76-2230(3) & (4). The Act sets fees for all categories of licensure and specifically authorizes the Real Estate Appraiser Board ("Board") to collect a license application fee of $100; an initial license fee of $200 or less; a transitional license application fee of $100; and an initial transitional license fee of $200 or less. § 76-2241(8), (10), (15) & (17).

You have requested our opinion regarding whether the Board is authorized to collect a license application fee and initial license fee from individuals who (1) have paid the transitional license application fee and initial transitional license fee; (2) have completed their educational or experience requirements before their

L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Elaine A. Chapman
Delores N. Coe-Barbee
Dale A. Comer
David Edward Cygan
Mark L. Ells
James A. Elworth
Laura H. Essay
Lynne R. Fritz
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid
Paul N. Potadle
Marie C. Pawol
Kenneth W. Payne
Jan E. Rempe
James H. Spears
Mark D. Starr
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

one-year transitional license has expired; and (3) desire to transfer from transitional license status to license status. Specifically, you have asked whether the one-year extension provided by § 76-2230(3) and (4) to complete licensure requirements implies that one may "roll over" from transitional license status to license status without completing a new application and paying additional fees.

As indicated by the laws noted above, there is a statutory distinction between a real estate appraiser "license" and a "transitional license." Section 76-2217.02 defines a transitional license as one to be issued to persons not yet able to meet full licensure requirements. Sections 76-2230(3) and (4) list the necessary qualifications for full licensure, but also state that "the board, upon request, shall grant a one-year extension of time" to complete certain requirements "after issuance of a transitional license." Further, § 76-2241 explicitly sets separate fees for both licenses and transitional licenses.

The legislative history behind the bill which created the transitional license, Laws 1991, LB 203, supports the idea that licenses and transitional licenses were intended to be separate licenses, requiring payment of separate fees, to be issued to appraisers with different types of credentials. Senator Chris Beutler, Introducer of LB 203, explained the fees applicable to transitional licenses:

> [A]ll this amendment does is provide that with regard to the transitional license application fee, it sets out what the fees will be and those fees are exactly the same as the fees for the regular license. No distinction [in the amount] was made basically because the transitional license, while it's in effect, will empower them to do the same thing that a regular license would, so <u>it's like a regular license but it's only available during a certain time period</u> while they are meeting the requirements.

<u>Floor Debate on LB 203</u>, 92nd Leg., 1st Sess. 3905 (Apr. 24, 1991) (statement of Senator Chris Beutler) (emphasis added).

The Committee on Banking, Commerce and Insurance, during its hearing on LB 203, accepted testimony from a proponent who suggested amending the portion of LB 203 which defined a transitional license and the qualifications necessary to attain such a license. This proposal was incorporated into the bill and now appears in § 76-2217.02. During his testimony to the Committee, the proponent referred to Advisory 90-2, issued on

November 28, 1990, by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The Appraisal Subcommittee is responsible for monitoring state requirements for the certification and licensing of individuals who are qualified to perform appraisal in connection with federally related transactions. 12 U.S.C.A. § 3332(a)(1) (1989). Advisory 90-2 suggested to the states that a "transitional license valid for a strictly limited period of no more than two years could be issued. . . . [T]he license . . . should be identified in some manner to indicate that it is a transitional license and that it is valid for a stated limited period of time and cannot be extended." The Appraisal Subcommittee of the Federal Financial Institutions Examination Council, Advisory 90-2 at 3 (Nov. 28, 1990) (emphasis added).

According to the proponent's testimony, once a person completes the transitional license requirements, he or she must undergo a separate application process to qualify for and attain full licensure.

> So if this law passes and in October someone [who lacks the requisite hours of experience to qualify for full licensure] goes in and applies, the best that the Appraisal Board can do is to issue him, under my amendment, a transitional license and within that next one-year period from the time that [the] transitional license is issued he would have to complete . . . the necessary hours in order to then qualify for a license.

Committee on Banking, Commerce and Insurance, Hearing on LB 203 at 33 (Jan. 29, 1991) (statement of Robert Hallstrom) (emphasis added).

Based on the above-cited statutes and legislative history, we believe that the Board is authorized to collect both transitional license fees and license fees in the situation you have described, as well as require separate applications for each type of license. If the Legislature had intended that payment of transitional license fees may replace payment of license fees once the educational or experience requirements under § 76-2230 are completed, the Legislature would have so stated. Principles of statutory construction do not allow reading a meaning into a statute that is not warranted by the legislative language. Kellogg Co. v. Herrington, 216 Neb. 138, 343 N.W.2d 326 (1984); Omaha Public Schools v. Hall, 211 Neb. 618, 319 N.W.2d 730 (1982).

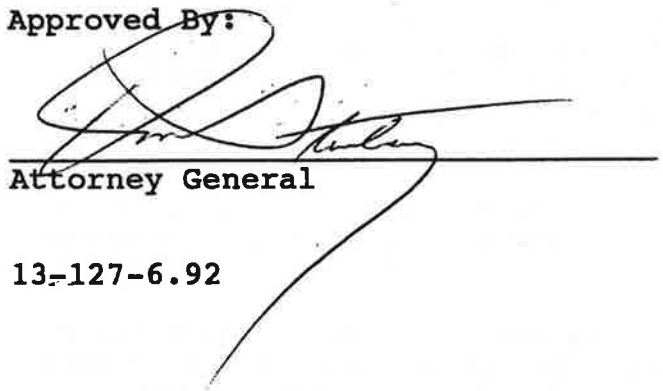
Therefore, we conclude that the Board is authorized to collect both transitional license fees, § 76-2241(15) & (17), and license fees, § 76-2241(8) & (10), from any appraiser who wishes to transfer from transitional license status to license status, whether or not the transitional license has expired. The one-year extension of time allowed in § 76-2230(3) and (4) to complete education or experience requirements for full licensure does not imply that one may "roll over" from holding a transitional license to a regular license without completing a separate application process and paying separate fees.

Sincerely,

DON STENBERG
Attorney General

Jan E. Rempe
Assistant Attorney General

Approved By:



Attorney General

13-127-6.92