

Opinion No. 66-70

June 2, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: W. J. Upton, Commissioner, Department of Banking, Greer Building, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. In a small loan business when an individual as sole owner dies, can the business continue to operate after the death of the licensee? That is to say, can the office operating under a trade name continue to make loans and charge the interest rate set out in the small loan act?
2. If the answer to question 1 is "yes" can the executor or administrator of the estate of the licensee legally obtain a renewal of the license when the license fee for renewal has been paid and deposited with the State Treasurer prior to the time of the death of the licensee?
3. Can the widow apply for a renewal and receive license on the money paid for renewal and continue the business with herself as sole owner?

CONCLUSIONS

1. No.
2. No.
3. No.

OPINION

{*87} ANALYSIS

All three of your questions hinge on the answer to the first one and we have concluded that the answer to it is no. As we understand the facts, the question you posed concerns a small loan license issued to only one person.

Some of the important general rules of law applicable to licenses are that licenses are not property and they do not create contract or vested rights; they confer no more than a personal privilege; and a license to pursue a particular occupation or business is

terminated by the death of the licensee. See 53 **C.J.S.** "Licenses", Sections 1, 2, 41 and 43; 33 **Am.Jur.** "Licenses", Section 2. In our opinion these rules are applicable to a small loan licensee in New Mexico.

We find specific statutory support for our position in Section 48-17-35, N.M.S.A., 1953 Compilation (P.S.). The third paragraph in subsection (b) of the noted section provides as follows:

"Except as a stockholder in a licensed corporation, no person whose name does not specifically appear on the face of the license shall have or hold any interest direct or otherwise in any license and shall not be deemed a licensee hereunder."

In addition, subsection (c) of the noted section provides in part as follows:

". . . Such license shall entitle the person or persons whose names appear on the face of the license, and no others, to enjoy and exercise the revocable privileges and immunities provided for in this act [48-17-30 to 48-17-58], but only in the manner and subject to the restrictions herein provided for."

Since both the general law and the statutes of New Mexico make it clear that a license to only one person is a personal privilege to that person alone, it must follow that the privilege dies with the named person. Therefore, the business cannot continue to operate. This, of course, does not mean that the loans outstanding at the time of death may not be collected at the small loan rate. We believe all contracts prior to the death of the licensee are valid contracts if legally made in the first instance. See Section 48-17-37, N.M.S.A., 1953 Compilation (P.S.). Since we have concluded that the privilege no longer exists and that the license was not a property right, a consideration of { *88 } your second and third questions is unnecessary.