

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

December 21, 2018

Robert E. Praytor, Administrator
Mississippi Real Estate Commission
Post Office Box 12685
Jackson, MS 39236

Re: Interpretation of Miss. Code Ann. Sections 73-35-10(2)(b)(ii)2 and
Section 73-34-14(2)(b)(ii)

Dear Mr. Praytor:

Attorney General Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

Background

Your request concerns the authority of the Mississippi Real Estate Commission and Mississippi Real Estate Appraiser Licensing and Certification Board to deny applicants a real estate license or real estate appraiser license under Section 73-35-10 and Section 73-34-14 of the Mississippi Code, respectively. These code sections direct the Commission not to issue a real estate license or real estate appraiser license if at any time preceding the date of application, an applicant was convicted of a felony involving "an act of fraud, dishonesty or a breach of trust." Your first question is whether the Commission should interpret certain felonies¹ to include acts of "fraud, dishonesty or a breach of trust". Your second question is whether the Commission must hold an evidentiary hearing before the revocation of licenses previously issued but which the Commission may no longer issue due to a felony conviction involving fraud, dishonesty or a breach of trust.

Applicable Law and Analysis

Section 73-35-10 describes the Commission's duties in obtaining and evaluating

¹ You list the following crimes in your request: mail fraud, credit card fraud, bank fraud, forgery/uttering, counterfeit instrument/goods, robbery, grand larceny, identity theft, felony false pretense, food stamp trafficking, business burglary, tax evasion/ false statement to federal authority.

background investigations for applicants seeking real estate broker or salesperson licenses and reads, in pertinent part:

(2)(a) The commission must ensure that applicants for real estate licenses do not possess a background that could call into question public trust. An applicant found by the commission to possess a background which calls into question the applicant's ability to maintain public trust shall not be issued a real estate license.

(b) The commission shall not issue a real estate license if:

(i) The applicant has had a real estate license revoked in any governmental jurisdiction within the five-year period immediately preceding the date of the application;

(ii) **The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic or foreign court:**

1. During the five-year period immediately preceding the date of the application for licensing; or

2. **At any time preceding the date of the application, if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.**

(c) The commission shall adopt rules and regulations necessary to implement, administer and enforce the provisions of this section.

(Emphasis added.)

Sections 73-34-14(2)(a) and (2)(b)(i)-(ii) contain identical language except that the determination of an applicant's fitness is to be made by the Mississippi Real Estate Appraiser Licensing and Certification Board (Board), an adjunct board of the Mississippi Real Estate Commission (Commission).

Your first question concerns whether certain felonies involve acts of "fraud, dishonesty, or a breach of trust" as stated in Sections 73-34-14 and 17-35-10. Such a determination cannot be made by this office but rather must be made by the Board or Commission based upon analysis of the elements of the crime as described in the specific section of law under which an applicant was convicted.² While we are unable to make a finding for the Board or Commission, we acknowledge that the descriptions and/or titles of the crimes do appear to imply, at a minimum, dishonesty. The Board and Commission should seek assistance and advice from legal counsel in reviewing the elements of these crimes in order to make a determination.

In response to your second question concerning the due process which should be afforded to licensees facing revocation of a license due to a conviction, Section 73-35-

² Your opinion request did not identify the sections of law or jurisdictions under which these individuals were convicted.

21 reads, in part:

(1) **The commission may, upon its own motion and shall upon the verified complaint in writing of any person, hold a hearing for the refusal of license or for the suspension or revocation of a license previously issued, or for such other action as the commission deems appropriate.** The commission shall have full power to refuse a license for cause or to revoke or suspend a license where it has been obtained by false or fraudulent representation, or where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

(g) **Entering a guilty plea or conviction in a court of competent jurisdiction of this state, or any other state or the United States of any felony;**

(Emphasis added.)

Regarding the revocation of a nursing license due to misconduct, the Mississippi Supreme Court has recognized:

By virtue of Miss. Code Ann. Section 73-15-29(2) a nursing license is a revocable privilege. It, much like a license to practice medicine and dentistry, represents a property interest, not a fundamental right. *Ramirez v. Ahn*, 843 F.2d 864, 867 (5th Cir.1988); *Neuwirth, D.D.S. v. Louisiana State Board of Dentistry*, 845 F.2d 553, 558 (5th Cir.1988). Wilson was not denied procedural due process. **He was given ample notice of both the time and place of the disciplinary hearing, as well as notice of the specific charges used as a basis for revoking his license.**

(Emphasis added.)

Mississippi State Bd. of Nursing v. Wilson, 624 So.2d 485, 494-95 (Miss. 1993). The Court provided further guidance in *Mississippi Bd. of Nursing v. Hanson*, 703 So.2d 239, 245 (Miss. 1997), in which it stated:

Hanson was informed of the time and place of the hearing. She was also informed that she had the right to appear, either personally or by counsel, or both, to produce witnesses or evidence in her behalf, to have subpoenas issued by the Board, and to cross-examine any witnesses introduced by the Board. Hanson took advantage of all the aforementioned rights at the hearing. This Court has held this process to be satisfactory in regard to the due process requirements of both the Mississippi and the United States Constitutions. *Mississippi State Board of Nursing v. Wilson*, 624 So.2d 485, 494-495 (Miss.1993).

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Additionally, the United States Court of Appeals, Seventh Circuit, has held that the business of selling real estate is entitled to due process protection, and an unsuccessful applicant for a real estate license was entitled to a predeprivation hearing. *Becker v. Illinois Real Estate Admin. and Disciplinary Bd.*, 884 F.2d 955 (7th Cir. 1989).

Finally, in addressing a similar question concerning the Mississippi State Board of Funeral Service's authority to refuse to issue or renew a license under Section 73-11-57 on the basis of a felony conviction, this office recognized that the board may refuse to issue a license after a hearing on the matter. MS AG Op., *Jordan* (December 4, 1984).

In consideration of the foregoing, we are of the opinion that licensees facing license revocation due to a felony conviction are entitled to proper notice of the charge and a hearing prior to revocation.

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

OFFICIAL By:  OPINION

Elizabeth S. Bolin
Special Assistant Attorney General