

See notes to sec. 1, art. I, on exercises of police power, citing *State v. Arnold*, 217 W 340, 258 NW 843.

450.12 History: 1963 c. 314; Stats. 1963 s. 151.16; 1969 c. 336 s. 107; Stats. 1969 s. 450.12.

450.13 History: 1963 c. 314; Stats. 1963 s. 151.17; 1969 c. 336 s. 108; Stats. 1969 s. 450.13.

450.18 History: 1969 c. 252 s. 5; 1969 c. 392 ss. 57g, 84g; Stats. 1969 s. 450.18.

CHAPTER 451.

Pharmacy Internship Board.

451.01 History: 1965 c. 351; Stats. 1965 s. 151.015 (2); 1969 c. 336 s. 96; Stats. 1969 s. 451.01.

451.02 History: 1965 c. 351; Stats. 1965 s. 151.015 (3); 1969 c. 336 s. 96; Stats. 1969 s. 451.02.

CHAPTER 452.

Real Estate Examining Board.

Revisor's Note, 1955: The statutes on licensing real estate brokers (136.01 to 136.18) and those on licensing business opportunity brokers (136.19 to 136.36) are almost identical. This bill eliminates the duplication by consolidating the sections on business opportunity brokers with the parallel sections on real estate brokers. Variances between the 2 parts are preserved and there is no change in substance except in a few very minor ways which are explained in the notes. Absence of a note to any section of the bill means that no change in the law is intended. This revision has been approved by the real estate brokers' board. [Bill 51-S]

Editor's Note: Ch. 231, Laws 1929, created secs. 136.01-136.16, Stats. 1929, and repealed the pre-existing sec. 136.01, which was based on ch. 656, Laws 1919, and amendatory statutes. The sections comprising ch. 136, Stats. 1967, were renumbered by ch. 336, Laws 1969.

452.01 History: 1929 c. 231; Stats. 1929 s. 136.01; 1933 c. 184 s. 2; 1947 c. 411 s. 6; 1947 c. 522; 1947 c. 612 s. 1; Stats. 1947 ss. 136.01, 136.19; 1955 c. 7, 359; Stats. 1955 s. 136.01; 1963 c. 14, 366; 1965 c. 123; 1969 c. 56, 212; 1969 c. 336 s. 47; Stats. 1969 s. 452.01.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Goldsmith v. Walker Mfg. Co., Inc.* 295 F Supp. 1037.

136.01 (2) (b), Stats. 1935, makes immaterial the question of ownership; the test is whether or not the person "is engaged wholly or in part in the business of selling real estate." 25 Atty. Gen. 741.

A company which is not excluded and which is formed for the purpose of loaning its own money, to be secured by mortgage, is a real estate broker under 136.01, Stats. 1939. 29 Atty. Gen. 105.

Persons who purchase unimproved lots and sell the same to the public after making improvements thereon come within the definition of "real estate broker" contained in 136.01 (2) (b), Stats. 1943. 33 Atty. Gen. 1.

452.02 History: 1957 c. 159; Stats. 1957 s. 136.011; 1961 c. 593, 675; 1965 c. 123; 1969 c. 336 ss. 48, 175 (6); Stats. 1969 s. 452.02.

A person selling the right to entomb a human body forever in a fixed burial space designated as a garden crypt, mausoleum crypt, or sarcophagus for a commercial cemetery is selling "grave spaces" and must be licensed under 136.011, Stats. 1957. 47 Atty. Gen. 253.

452.03 History: 1929 c. 231; Stats. 1929 s. 136.02; 1947 c. 522; Stats. 1947 ss. 136.02, 136.20; 1955 c. 7; Stats. 1955 s. 136.02; 1957 c. 159; 1961 c. 593; 1963 c. 366; 1965 c. 123; 1969 c. 336 ss. 48, 175 (6); Stats. 1969 s. 452.03.

A contract by 2 real estate brokers, one licensed and one not licensed, for the sale of a store business and the real estate used therewith to a third party, cannot be the basis for a recovery of fees by either or by both; the contract being void as to one is void as to both. *Payne v. Volkman*, 183 W 412, 198 NW 438.

The sale of a public utility being considered as a sale of personal property, a broker who was employed to sell the utility did not come under the provisions of 136.01, Stats. 1923. *Ireland v. Tomahawk L. T. & I. Co.* 185 W 148, 200 NW 642.

One hired to put on a sales campaign to sell cemetery lots, whose duty was to arrange for advertising and hire salesmen to sell the lots at fixed prices, was not required to have a real estate broker's license, and the fact that the gross sales were made the basis for determining the amount of the compensation does not alter the legal relation of the parties. *Howard v. Heinig*, 191 W 166, 210 NW 414.

One who is not licensed as a real estate broker in this state is not authorized to negotiate a lease for another as broker, and he cannot recover the agreed commission. *Nickoil v. Racine C. & S. Co.* 194 W 298, 216 NW 502.

To recover a broker's commission, a corporation engaged in the real estate business must have a real estate broker's license under 136.01, Stats. 1927, even though it had succeeded to the business of a licensed brokerage partnership which ceased when the corporation began business. *George F. Russell, Inc. v. Hickcox*, 197 W 622, 222 NW 807.

An agreement to pay a commission on a loan from a foreign corporation secured by a real estate mortgage, which loan is negotiated by a nonresident loan agent through a resident insurance agent, neither of whom is licensed in Wisconsin, is invalid and precludes a recovery of the commission. *Livingston v. Linker R. Co.* 202 W 232, 231 NW 626.

Under the provisions of 136.01 (2) (c) and (5), Stats. 1927, one entering into a contract in this state to procure a loan for another, to be secured by a real-estate mortgage, for a commission, is holding himself out as a broker or salesman, and cannot recover the commission unless he has a real estate broker's or real estate salesman's license. *Livingston v. Linker R. Co.* 202 W 232, 231 NW 626.

The licensing board was justified in denying a real estate broker's license to an applicant who was unable to read and write the English language although he operated only in selling real estate owned and platted by himself, since a "real estate broker" is anyone who is

engaged wholly or in part in the business of selling real estate whether or not such real estate is owned by himself. State ex rel. Green v. Clark, 235 W 628, 294 NW 25.

If an alleged agreement between plaintiff and defendant to buy and sell real estate created a partnership, the business of the partnership was carried on in an unlawful manner because, among other things, the partnership was not licensed, as required by 136.02, Stats. 1957, and in such situation plaintiff could not maintain an action seeking accounting for assets and profits of partnership. Maslowski v. Bitter, 7 W (2d) 167, 96 NW (2d) 349.

A joint listing contract by real-estate brokers, one of whom is unlicensed, is invalid as to all, so as to preclude the recovery of a commission on the sale of the property covered by such contract. Kemmerer v. Roscher, 9 W (2d) 60, 100 NW (2d) 314.

A corporation attempting to rerent its own property after a tenant vacated during the term of a lease is not subject to ch. 136, Stats. 1965, and may recover expenses from the tenant. St. Regis Apartment Corp. v. Sweitzer, 32 W (2d) 426, 145 NW (2d) 711.

See note to sec. 1, art. I, on equality, citing State ex rel. R. E. Exam. Board v. Gerhardt, 39 W (2d) 701, 159 NW (2d) 622.

Parties selling an interest in oil leases are real estate brokers under ch. 656, Laws 1919. 9 Atty. Gen. 293.

Officers who have authority, by virtue of their offices and the articles and bylaws, to sell lands of their corporations and fix the terms of sale, do not need a license to act; other officers and employes do need a license. 10 Atty. Gen. 205, 288.

A publisher who agrees to print catalog list of farms for sale with names and addresses of the owners and to advertise in certain papers that such catalog will be mailed to all persons requesting it, for which the owner agrees to pay the publisher \$15, is not required to be licensed as a real estate broker or salesman. 13 Atty. Gen. 474.

An employe of a corporation, employed to secure purchasers for its real estate, must be a licensed real estate salesman. 14 Atty. Gen. 186.

One who deals in mining leases is required to have a license under 136.01, Stats. 1925. 14 Atty. Gen. 263.

A person engaged by a building and loan association or receiver appointed by a court to sell or rent real estate on a commission basis is real estate broker and must be licensed in the absence of factors which would constitute him an employe. 24 Atty. Gen. 735.

One who is licensed only as a business opportunity broker is not authorized to act as a broker in connection with the sale of real estate as part of a business. 39 Atty. Gen. 475.

Persons engaging in the sale only of personal property which may be useful in a business need not be licensed as business opportunity brokers. 42 Atty. Gen. 130.

A foreign corporation, operating as a business opportunity broker by means of agents in Wisconsin who solicit "offers to list" subject to acceptance by the home office in Chicago, must obtain a license. Its agents must obtain salesmen's licenses. 43 Atty. Gen. 3.

The purpose of ch. 136, Stats. 1955, provid-

ing for the licensing of real estate brokers and agents by the state, is to protect all of the people of the state from incompetency and untrustworthiness on the part of those engaged in the real estate business. 44 Atty. Gen. 146.

A person proposing to engage in the sale of uranium mining leases must be licensed as a real estate broker under ch. 136, Stats. 1955. 45 Atty. Gen. 20.

An auctioneer selling real estate at public auction should have a license, even though a licensed broker participates. 46 Atty. Gen. 1.

An interest in a cemetery lot is an interest in real estate; persons selling cemetery lots must be licensed as brokers; and the real estate brokers' board has no statutory authority for establishing more than one class of real estate broker and giving a separate and limited examination to persons who are engaged solely in the sale of cemetery lots. 46 Atty. Gen. 1.

Authority of the real estate brokers' board to regulate name or names under which a real estate broker can do business is discussed in 47 Atty. Gen. 72.

Foreign corporations or individuals soliciting sales of out-of-state lands by advertisement in Wisconsin newspapers and by literature mailed directly to Wisconsin residents are probably not required to comply with ch. 136, Stats. 1957; nor do they appear to be amenable to service of process under 262.09 (4) and 180.825. 48 Atty. Gen. 6.

Sale of a corporate business, consisting of real estate, inventory, goodwill, etc., by means of a stock transaction is discussed in 49 Atty. Gen. 4.

For discussion of 136.01 (6) (d), Stats. 1963, relative to an auctioneer engaged by a bank acting as executor and the need for a real estate broker's or salesman's license see 52 Atty. Gen. 405.

A real estate broker must be licensed as a securities broker in order to negotiate for the sale of a corporate business by means of stock transfer except where exempt securities are involved. 55 Atty. Gen. 152.

A corporation operating a "sell your own home" service would probably be required to be licensed as a real estate broker but the facts of each case must be evaluated. 55 Atty. Gen. 183.

452.04 History: 1929 c. 231; Stats. 1929 s. 136.04; 1933 c. 470 s. 17; 1947 c. 522; Stats. 1947 ss. 136.04, 136.21; 1951 c. 319 s. 243; 1955 c. 7; Stats. 1955 s. 136.04; 1959 c. 364; 1963 c. 520; 1965 c. 12, 123, 249; 1965 c. 433 s. 102; 1969 c. 336 ss. 50, 51, 175 (6); Stats. 1969 s. 452.04.

452.05 History: 1929 c. 231; Stats. 1929 s. 136.05; 1947 c. 522; Stats. 1947 ss. 136.05, 136.22; 1955 c. 7; Stats. 1955 s. 136.05; 1957 c. 159; 1959 c. 364; 1961 c. 593; 1963 c. 366, 459; 1965 c. 123; 1967 c. 26; 1969 c. 336 ss. 52, 175 (6); Stats. 1969 s. 452.05.

Where an applicant for a real estate brokers' license was convicted of permitting the use of a building for immoral purposes, payment of the penalty exacted by the law, the restoration to citizenship, and the living of an upright life for 8 years thereafter, overcome the moral turpitude involved in the commission of the offense; and the evidence in the

record is sufficient to show affirmatively that the applicant is now possessed of the required moral qualities to engage in the real estate business. *State ex rel. Schiewitz v. Wisconsin R. E. B. Board*, 188 W 632, 206 NW 863.

The fact that the real estate brokers' board had passed a resolution that it would look with disfavor upon applications for the sale of Florida real estate does not indicate prejudice against any applicant, but will be presumed to be actuated by a desire to protect the public against false and misleading practices usually a part of every land boom. *State ex rel. Durham v. Wisconsin R. E. B. Board*, 192 W 396, 211 NW 292.

An applicant for a broker's license must satisfy the real estate brokers' board that he is trustworthy and competent and must if requested furnish financial statements. *State ex rel. Durham v. Wisconsin R. E. B. Board*, 192 W 396, 211 NW 292.

A statute requiring that an applicant for a real estate broker's license be competent to transact the business, and that he shall have a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, and leases, and that he shall have a "fair knowledge of the English language" requires ability to read and write the English language. *State ex rel. Green v. Clark*, 235 W 628, 294 NW 25.

See note to 452.08, citing *Frankenthal v. Wisconsin R. E. B. Board*, 3 W (2d) 249, 88 NW (2d) 352, 89 NW (2d) 825.

A fair knowledge, by an applicant for a license, of the matters mentioned in 136.05 (2) is a statutory requirement which the board may not dispense with, but an inquiry into competency may go further within reason and sound discretion into circumstances and situations commonly presented by a broker's occupation, and such inquiry is not prevented because not mentioned in the statute. *Wall v. Wisconsin R. E. B. Board*, 4 W (2d) 426, 90 NW (2d) 589.

The real estate brokers' board must grant a broker's license upon a proper showing made by an applicant. 9 Atty. Gen. 17.

The real estate brokers' board may ask questions of an applicant for a real estate broker's license regarding his United States citizenship and his intention to become a naturalized citizen, but cannot refuse a license on the ground of a negative answer to either question. 19 Atty. Gen. 488.

136.05 (1), Stats. 1947, requires the real estate brokers' board to consider the past conduct of all the officers of a corporation applying for a real estate broker's license for a period of at least 2 years preceding the application and the board may not limit its inquiry to those officers who are to be designated by the corporation to act as real estate brokers as provided in 136.07 (2) (a). 38 Atty. Gen. 68.

A person licensed as a broker can do business under more than one trade name without obtaining a separate license under each trade name, but if 2 brokers engage in some joint activity, which is in effect a partnership, they should obtain a license as a partnership, under which one of them could operate without further fee. 46 Atty. Gen. 1.

The real estate brokers' board has authority to require a foreign corporation to comply

with ch. 226, Stats. 1955, before granting it a broker's license. (19 Atty. Gen. 520, applied.) 46 Atty. Gen. 1.

A director of a business corporation is an officer of the corporation within the meaning of 136.05 (1) (d) and (e) and 136.07 (2), Stats. 1961, and may be designated to act as a broker by a corporation otherwise qualifying for a real estate broker's license. 50 Atty. Gen. 191.

452.06 History: 1929 c. 231; Stats. 1929 s. 136.06; 1933 c. 184 s. 3; 1947 c. 522; Stats. 1947 ss. 136.06, 136.23; 1955 c. 7; Stats. 1955 s. 136.06; 1957 c. 159; 1959 c. 364; 1961 c. 593, 675; 1963 c. 10, 366; 1965 c. 123; 1969 c. 154; 1969 c. 336 ss. 53, 175 (6); 1969 c. 392 s. 69y; Stats. 1969 s. 452.06.

Revisor's Note, 1955: Old 136.06 (5) (b) says a real estate salesman whose broker has had his license suspended or revoked may apply for transfer to another broker, provided the salesman "is not a party to the proceeding bringing about the suspension or revocation of the license of his broker." 136.23 (4) (b) as to business opportunity brokers, speaks of "a party to the activities causing the suspension" etc. While a different interpretation of the 2 clauses is possible, the intent is probably the same, and the more specific expression "a party to the activities causing" etc. is used. [Bill 51-S]

An applicant for a real estate or business opportunity broker's or salesman's license is not entitled to a refund of his fees unless the withdrawal of his application takes place before any investigation has been made thereon. The real estate brokers' board is not required to allow any specified time to elapse between the receipt of an application for a license and the commencement of its investigation thereon. 41 Atty. Gen. 16.

452.07 History: 1957 c. 159; Stats. 1957 s. 136.065; 1969 c. 336 s. 54; Stats. 1969 s. 452.07.

452.08 History: 1929 c. 231; Stats. 1929 s. 136.07; 1931 c. 435 s. 1; 1933 c. 184 s. 1; 1947 c. 522; Stats. 1947 ss. 136.07, 136.24; 1955 c. 7; Stats. 1955 s. 136.07; 1959 c. 364; 1963 c. 366; 1965 c. 123; 1969 c. 154; 1969 c. 336 ss. 55, 175 (6); Stats. 1969 s. 452.08.

Revisor's Note, 1955: The 3d sentence of (2) provided that no license as a salesman should be issued to an officer of a corporation or member of a partnership to whom a license was issued as a broker. "Whom" is changed to "which" to express more clearly what is believed to be the intent, and to conform to the practice. [Bill 51-S]

Notwithstanding an apparently inconsistent provision in 136.05 (1) (e), Stats. 1955, relating to the required contents of an application for a real-estate brokers' license, 136.07 (2) must be construed as permitting a partnership to be licensed without requiring an inactive partner also to be licensed, in view of the board's similar construction thereof for nearly 27 years with the apparent acquiescence of the legislature, and hence the attempt of the board in 1956 to reverse its policy of many years in so interpreting such section is invalid and void. *Frankenthal v. Wisconsin R. E. B. Board*, 3 W (2d) 249, 88 NW (2d) 352, 89 NW (2d) 825.

Basing the suspension of the license of a broker on 136.07 (3) was not justified where salesmen who were subjected to discipline for certain acts were not employed by him as his salesmen but were employed by an incorporated realty company, even though he was the sole beneficial owner of the capital stock of the company; no reason of public policy was advanced which would justify the expedient of piercing the corporate veil in the instant proceedings when there was neither participation in the wrongdoing nor any laxity of supervision traceable to him. 136.07 (3) does not only impose civil liability on a broker for the acts of his salesmen but is applicable to disciplinary proceedings instituted under 136.08 (2). *Nolan v. Wisconsin R. E. B. Board*, 3 W (2d) 510, 89 NW (2d) 317.

A real estate salesman's license is not terminated, so as to require a new application and second fee, by accepting employment under a broker not named in his application. 19 Atty. Gen. 175.

A real estate broker may be licensed as a salesman upon application and payment of the fee therefor; he may not be required to first surrender his broker's license. 19 Atty. Gen. 335.

The real estate brokers' board is not required to furnish multiple certificates to a licensee using several business names. 47 Atty. Gen. 72.

See note to 452.05, citing 50 Atty. Gen. 191.

452.09 History: 1959 c. 364; Stats. 1959 s. 136.075; 1965 c. 123; 1969 c. 336 ss. 56, 175 (6); Stats. 1969 s. 452.09.

For discussion of 136.075 and regulations relative to mortgage broker, licensed as real estate broker, collecting and depositing loans and payments see 51 Atty. Gen. 94.

452.10 History: 1929 c. 231; Stats. 1929 s. 136.08; 1931 c. 435 s. 1; 1933 c. 159 s. 26; 1933 c. 184 s. 2; 1947 c. 522; Stats. 1947 ss. 136.08, 136.25; 1955 c. 7; Stats. 1955 s. 136.08; 1961 c. 593, 675; 1963 c. 14, 366; 1965 c. 123; 1969 c. 336 ss. 57, 175 (6); Stats. 1969 s. 452.10.

Revisor's Note, 1955: The 3d sentence of (1), on additional evidence, is not in 136.25 (1) as to business opportunity brokers, but there seems no reason why it should not apply to them as well as to real estate brokers. See a similar provision in 227.19 on review of orders. In (3) the language "or anyone who has financial interest in or is in any way connected with the operation of a brokerage business" is added from 136.25 (3), where it applied only to business opportunity brokers. [Bill 51-S]

Statements by the trial court in a broker's unsuccessful action against H. for commissions, which statements were not findings or determinations, did not preclude the real estate brokers' board from drawing such inferences as were warranted by the facts adduced in subsequent proceedings before it in which it revoked the broker's license on the ground that he had harassed H. for commissions knowing that none was owing. *State ex rel. Pallange v. Wisconsin R. E. B. Board*, 241 W 77, 4 NW (2d) 167.

The reference to service of a complaint in 136.08 (4) is construed to apply where a third

party has complained, not where the real estate brokers' board initiates proceedings on its own motion. A written notice given by the board to accused brokers, that a hearing would be held on a specified date, and listing numerous subjects to be gone into at the hearing, was sufficient under 136.08 (2), 136.09, 227.09, and requirements of due process. Suspension of license, as well as revocation, may be the final discipline to be invoked by the board. *Nolan v. Wisconsin R. E. B. Board*, 3 W (2d) 510, 89 NW (2d) 317.

A broker's failure to reduce an offer to purchase certain premises to writing and have the same subscribed by the prospective purchaser and leave a copy thereof with him, as required by a rule of the real estate brokers' board, and his failure to have a prospective seller sign a written listing contract and thereby putting the broker in a position where he could not legally collect his commission if he effected a sale, were sufficient to support the board's determination of incompetency, and this, together with the broker's admitted misappropriation of a down payment and failure to account therefor, warranted the board's revocation of his license. *Sailer v. Wisconsin R. E. B. Board*, 5 W (2d) 344, 92 NW (2d) 841.

The real estate brokers' board's order in imposing a one month's suspension of license as to one offender and a 4 month's suspension of license as to another for the identical misconduct is so discriminatory as to be capricious, within meaning of 227.20 (1) (e), and the greater punishment will be modified to change it to the lesser. Revocation of broker's license for misconduct of employes, consisting merely of taking purchase offer from prospective purchaser signed in blank, and not leaving a copy with such prospect, and holding onto a down payment for a time after being notified by prospective purchasers that they had decided against the purchase of certain property, constituted arbitrary action which cannot be sustained. It is not mandatory that the broker's license of a corporate broker be suspended or revoked merely because such discipline is invoked against one of its offending employes or officers. *Lewis Realty v. Wisconsin R. E. B. Board*, 6 W (2d) 99, 94 NW (2d) 238.

As used in 136.08 (2) (i), the word "incompetency" cannot be interpreted to only embrace such impairment of mental or physical capabilities of a licensee as occurs subsequent to the issuance of the license by the board. As used in 136.08 (2) (k), the words "improper dealing" are restricted to conduct which involves moral culpability and which tends to take an unfair financial advantage of the person with whom the actor is dealing, that is, it must be closely akin to dishonest and fraudulent dealing. A broker's conduct, in holding onto purchaser's down payment for a time, after they finally decided they did not want a certain property, in the hope of inducing them to purchase other property listed by the broker, was a violation of 136.08 (2) (h) but did not constitute "improper dealing" and, although such conduct would warrant suspension of broker's license for a limited period, it did not warrant revocation of the

license. *Lewis Realty v. Wisconsin R. E. B. Board*, 6 W (2d) 99, 94 NW (2d) 238.

Where a real-estate broker was acting as agent for a buyer, pursuant to an agreement to pay a commission, he was acting in a fiduciary capacity requiring full disclosure of all information material to the transaction, so that when he stated, contrary to fact, that he would receive no commission from the seller, he thereby withheld information to which the buyer was entitled. Concealment of information material to the transaction where such a fiduciary relationship exists constitutes a species of fraud. When the broker received a commission from both seller and buyer without the knowledge and consent of the buyer, it was the duty of the broker to account to the buyer for the profit, since the broker was entitled to retain only one commission. *Degner v. Moncel*, 6 W (2d) 163, 93 NW (2d) 857.

A finding that a broker was an agent for purposes of locating and buying land and that he concealed a profit he made on the purchase justified revocation of his license. *Hilboldt v. Wisconsin R. E. B. Board*, 28 W (2d) 474, 137 NW (2d) 482.

136.08 (1a), Stats. 1967, does not condition the real estate examining board to injunctive relief where it is established that the person engaged in certain activities is acting as a broker without a license. *State ex rel. R. E. Exam. Board*, 39 W (2d) 701, 159 NW (2d) 622.

In determining upon the revocation of a license, the real estate brokers' board may consider evidence of fraud committed prior to the enactment of the statute under which the board operates. 10 Atty. Gen. 577.

Where an investigation has been commenced by the real estate brokers' board and money expended, the board may refuse consent to withdrawal of an application for renewal of a broker's license. 13 Atty. Gen. 78.

452.11 History: 1929 c. 231; Stats. 1929 s. 136.09; 1947 c. 522; Stats. 1947 ss. 136.09, 136.26; 1955 c. 7; Stats. 1955 s. 136.09; 1961 c. 675; 1965 c. 123; 1969 c. 336 ss. 58, 175 (6); Stats. 1969 s. 452.11.

Revisor's Note, 1955: 136.09 and 136.26 vary slightly as to place of hearing. 136.26 (1) says "hearings shall be held in the county where the applicant resides or wherein the business opportunity broker complained of or whose salesman complained of has his place of business". The general rule of the board on this subject says that "All hearings shall be held in the county wherein the applicant for a license, or the broker complained of, or whose salesman is complained of, has his place of business". (Wis. Adm. Code s. REB 3.01) The rule further provides for a change of place of hearing. This revision follows 136.09 and the board rule. [Bill 51-S]

See note to 452.10, citing *Nolan v. Wisconsin R. E. B. Board*, 3 W (2d) 510, 89 NW (2d) 317.

Under 136.09 (1), requiring the real estate brokers' board to give an applicant for a license a public hearing before denying a license, the board must at least tender a hearing to an applicant, and it is no excuse for not giving or tendering a hearing that the applicant

did not ask for one. *Wall v. Wisconsin R. E. B. Board*, 4 W (2d) 426, 90 NW (2d) 589.

452.12 History: 1929 c. 231; Stats. 1929 s. 136.10; 1947 c. 522; Stats. 1947 ss. 136.10, 136.27; 1955 c. 7; Stats. 1955 s. 136.10; 1961 c. 675; 1963 c. 366; 1969 c. 336 ss. 59, 175 (6); Stats. 1969 s. 452.12.

452.13 History: 1929 c. 231; Stats. 1929 s. 136.11; 1947 c. 522; Stats. 1947 ss. 136.11, 136.28; 1955 c. 7; Stats. 1955 s. 136.11; 1963 c. 366; 1969 c. 336 s. 59; Stats. 1969 s. 452.13.

A real estate agent suing for commission must allege and prove that he was a licensed broker or salesman at the time the alleged cause of action arose. Remedial statutes may be of retrospective nature when they do not impair contracts or disturb vested rights. Since the statute already required a salesman to have a license, an amendment placing on him the necessity of showing such license, becoming effective after bringing action for commission but prior to trial, did not take away any right or remedy, and he was bound thereby, hence lack of proof of such license precludes recovery. *Levy v. Birnschein*, 206 W 486, 240 NW 140.

A listing contract void in its inception because one of 2 signing brokers was not licensed remains void, and is not validated by the fact that both were licensed when another broker sold the property. *Kemmerer v. Roscher*, 9 W (2d) 60, 100 NW (2d) 314.

An oral agreement, made in Illinois, to pay a commission to a broker licensed in Illinois but not in Wisconsin, for selling Wisconsin real estate was unenforceable in Wisconsin. Since a Wisconsin court would not entertain action, a federal court will dismiss. *Reed v. Kelly*, 177 F (2d) 473, affirming *Reed v. Kelly*, 81 F Supp. 755.

452.14 History: 1929 c. 231; Stats. 1929 s. 136.12; 1947 c. 522, 534; Stats. 1947 ss. 136.12, 136.29; 1949 c. 262; 1955 c. 7; Stats. 1955 s. 136.12; 1959 c. 364; 1963 c. 366; 1965 c. 123; 1969 c. 336 ss. 60, 175 (6); Stats. 1969 s. 452.14.

A nonresident may not obtain a Wisconsin real estate broker's license unless he is licensed in his home state. 33 Atty. Gen. 207.

A foreign corporation engaged in the real estate business is required to comply with 136.12 and 180.801, Stats. 1955. 46 Atty. Gen. 1.

For discussion relative to licensing and hiring nonresidents either licensed or not in the state of residence see 50 Atty. Gen. 93.

Jurisdiction by implied consent. *O'Melia*, 29 MLR 31.

452.15 History: 1929 c. 231; Stats. 1929 s. 136.13; 1933 c. 184 s. 2; 1945 c. 34; 1947 c. 522; Stats. 1947 ss. 136.13, 136.30; 1949 c. 262; 1955 c. 7; Stats. 1955 s. 136.13; 1965 c. 123; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 336 ss. 61, 62, 175 (6); Stats. 1969 s. 452.15.

452.16 History: 1929 c. 231; Stats. 1929 s. 136.14; 1947 c. 522; Stats. 1947 ss. 136.14, 136.31; 1955 c. 7; Stats. 1955 s. 136.14; 1961 c. 675; 1965 c. 123; 1969 c. 336 ss. 63, 175 (6); Stats. 1969 s. 452.16.

An attack on the board's order because it did not provide for any time limitation as to

the period of revocation could not be grounded on this section. *Hilboldt v. Wisconsin R. E. B. Board*, 28 W (2d) 474, 137 NW (2d) 482.

The real estate brokers' board may not refuse to grant a salesman's license for a period of 2 years because an applicant's broker's license has been revoked. 20 Atty. Gen. 510.

452.17 History: 1929 c. 231; Stats. 1929 s. 136.15; 1931 c. 435 ss. 2, 3; 1943 c. 375 s. 53; 1947 c. 522; 1947 c. 614 s. 1; Stats. 1947 ss. 136.15, 136.32; 1951 c. 261 s. 10; 1955 c. 7; Stats. 1955 s. 136.15; 1965 c. 123; 1969 c. 336 ss. 63, 175 (6); Stats. 1969 s. 452.17.

On certiorari to review the correctness of an order of the real estate brokers' board denying a license to a realtor, the findings of the board will not be disturbed if there is any competent evidence to sustain them; but where the evidence is all one way the board cannot disregard it. *State ex rel. Schiewitz v. Wisconsin R. E. B. Board*, 188 W 632, 206 NW 863.

The denial or revocation of a broker's license must be supported by the findings of the real estate brokers' board. *State ex rel. Progreso D. Co. v. Grootemaat*, 202 W 155, 231 NW 628.

452.18 History: 1929 c. 231; Stats. 1929 s. 136.16; 1933 c. 184 s. 2; 1947 c. 522; Stats. 1947 ss. 136.16, 136.33; 1955 c. 7; Stats. 1955 s. 136.16; 1959 c. 364; 1961 c. 675; 1963 c. 14, 366; 1969 c. 336 s. 63; Stats. 1969 s. 452.18.

136.16 (1), Stats. 1967, makes manifest the legislature's determination that acting as a real estate broker or salesman without a license causes injury to the public interest, and hence the real estate examining board's finding in the instant case that an attorney's activities were contrary to the public interest were warranted. *State ex rel. R. E. Exam. Board v. Gerhardt*, 39 W (2d) 701, 159 NW (2d) 622.

452.19 History: 1933 c. 184 s. 3; Stats. 1933 s. 136.17; 1947 c. 522; Stats. 1947 ss. 136.17, 136.34; 1955 c. 7; Stats. 1955 s. 136.17; 1969 c. 336 s. 63; Stats. 1969 s. 452.19.

452.20 History: 1933 c. 184 s. 3; Stats. 1933 s. 136.18; 1947 c. 522; Stats. 1947 ss. 136.18, 136.35; 1955 c. 7; Stats. 1955 s. 136.18; 1961 c. 675; 1963 c. 366; 1965 c. 123; 1969 c. 336 ss. 64, 175 (6); Stats. 1969 s. 452.20.

CHAPTER 453.

Veterinary Examining Board.

453.02 History: 1961 c. 294; Stats. 1961 s. 150.02; 1969 c. 336 ss. 84, 175 (7); Stats. 1969 s. 453.02.

453.04 History: 1961 c. 294; Stats. 1961 s. 150.04; 1969 c. 336 ss. 85, 86, 175 (7); Stats. 1969 s. 453.04.

453.05 History: 1945 c. 294; Stats. 1945 s. 95.51 (4); 1961 c. 294 ss. 3, 3a, 4; 1961 c. 622 s. 42; Stats. 1961 s. 150.05; 1967 c. 354; 1969 c. 336 ss. 87, 175 (7); Stats. 1969 s. 453.05.

453.06 History: 1961 c. 294; Stats. 1961 s.

150.06; 1969 c. 336 ss. 88, 175 (7); Stats. 1969 s. 453.06.

453.07 History: 1961 c. 294; Stats. 1961 s. 150.07; 1969 c. 336 s. 89; Stats. 1969 s. 453.07.

453.08 History: 1961 c. 294; Stats. 1961 s. 150.08; 1969 c. 336 ss. 90, 175 (7); Stats. 1969 s. 453.08.

453.09 History: 1961 c. 294; Stats. 1961 s. 150.10; 1969 c. 336 s. 91; Stats. 1969 s. 453.09.

CHAPTER 454.

Watchmaking Examining Board.

454.01 History: 1937 c. 91; Stats. 1937 s. 125.01; 1969 c. 336 s. 17; Stats. 1969 s. 454.01.

454.02 History: 1937 c. 91; Stats. 1937 s. 125.02; 1969 c. 336 s. 18; Stats. 1969 s. 454.02.

454.04 History: 1937 c. 91; Stats. 1937 s. 125.04; 1949 c. 585; 1959 c. 544; 1969 c. 336 s. 20; Stats. 1969 s. 454.04.

454.05 History: 1937 c. 91; Stats. 1937 s. 125.05; 1949 c. 585; 1969 c. 336 s. 21; Stats. 1969 s. 454.05.

454.06 History: 1937 c. 91; Stats. 1937 s. 125.06; 1939 c. 187; 1949 c. 585; 1969 c. 336 ss. 22, 23, 175 (8); Stats. 1969 s. 454.06.

454.07 History: 1937 c. 91; Stats. 1937 s. 125.07; 1969 c. 336 s. 24; Stats. 1969 s. 454.07.

454.08 History: 1937 c. 91; Stats. 1937 s. 125.08; 1943 c. 375 s. 50; 1949 c. 585; 1959 c. 544; 1969 c. 336 ss. 25, 26, 175 (8); Stats. 1969 s. 454.08.

454.09 History: 1937 c. 91; Stats. 1937 s. 125.09; 1969 c. 336 s. 27; Stats. 1969 s. 454.09.

454.15 History: 1939 c. 343; Stats. 1939 s. 125.15; 1949 c. 585; 1969 c. 336 s. 28; Stats. 1969 s. 454.15.

454.16 History: 1969 c. 431; Stats. 1969 s. 454.16.

CHAPTER 455.

Psychology Examining Board.

455.01 History: 1969 c. 290; Stats. 1969 s. 455.01.

455.02 History: 1969 c. 290; Stats. 1969 s. 455.02.

455.03 History: 1969 c. 290; Stats. 1969 s. 455.03.

455.04 History: 1969 c. 290; Stats. 1969 s. 455.04.

455.05 History: 1969 c. 290; Stats. 1969 s. 455.05.

455.06 History: 1969 c. 290; Stats. 1969 s. 455.06.

455.07 History: 1969 c. 290; Stats. 1969 s. 455.07.