

December 15, 1939.

Mr. William Alberts,  
State Land Commissioner,  
Phoenix, Arizona.

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**ARIZONA ATTORNEY GENERAL**

Dear Sir:

We are in receipt of the Reporter's Transcript of a meeting had before the Real Estate Department entitled In the Matter of Henry Cozza, Complainant, v. Joe V. Prochaska and H. J. Dunham. A hearing was had upon a complaint filed by Henry Cozza setting out certain matters with which you are already acquainted.

We have thoroughly examined the transcript, and in view of the matters therein brought to mind, we believe that the proceedings will have to be dismissed on the ground that the Real Estate Department is without jurisdiction in the instant case. We refer you to Section 23 of the Real Estate Act which provides for the revocation or suspension of a license which is in part as follows:

"\* \* \*when it shall appear that the holder thereof, while a licensee under the provisions of this act, within three years immediately preceding, in the performance of or attempt to perform any of the acts authorized by such license or by this act, has: \* \* \*"

And the section then goes on to enumerate certain things that are violations of the act which would justify the revocation of a license.

It will be noted from the above quoted portion of Section 23, that any of the acts set forth therein must have been done while the licensee was engaged in negotiating the transaction involving real estate or a lease as defined in the act.

We do not believe that the transaction in this instance was a transaction involving either real estate or a lease. Although there is some evidence in the transcript concerning a lease, we cannot come to the conclusion that Mr. Dunham negotiated the same or had a part therein, and it is our belief that the lease which he drew up for the parties was neither the principal nor an incidental part of a transaction such as is contemplated by the Act.

The thing that Mr. Dunham negotiated the sale of was a business opportunity, and for which we believe he would not need a license under your Act. We therefore recommend that the proceedings be dismissed upon the ground that the Real Estate Department is without jurisdiction in the premises.

Very truly yours,

EARL ANDERSON,  
Special Assistant  
Attorney General.

JOE CONWAY, Attorney General.

EDWARD P. CLINE, Asst. Atty. Gen.

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