

FILE

Subject

Insurance
General

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

February 12, 1974

Opinion No. 74- 44

Honorable Fletcher Bell
Commissioner of Insurance
State Office Building
Topeka, Kansas 66612

Dear Commissioner Bell:

You inquire whether a title insurance company authorized to do business in this state may also do business as a licensed abstracting company. Your department has taken the position that the conduct of this additional business by an insurance corporation is prohibited by K.S.A. 40-231, which states thus:

"No company shall directly or indirectly deal or trade in goods, wares or merchandise or other commodities, except such as may have been insured by it and such as may be sold under judicial process or otherwise, in which or in the profits of the sale of which it may be interested by reason of having previously entered into any contract of insurance, indemnity or suretyship.

The licensing of abstracters is governed by K.S.A. 58-2801 et seq., which commences thus:

"Every person, firm, partnership, association or corporation, who shall make, compile or complete and sell abstracts of title . . . shall first secure . . . a valid . . . license"

The prohibition of K.S.A. 40-231 is purely statutory, and is not a restriction imposed by the Commissioner of Insurance in the exercise of any administrative discretion. See, e.g., Guaranty Co. v. Barnes, 81 Kan. 422 (1909). The sole question

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presented is whether the sale of abstracts falls within the prohibition against dealing in "goods, wares or merchandise or commodities." In our opinion it does. In Culp v. Holbrook, 129 N.E. 278, 280, 76 Ind.App. 272, the court concluded that the phrase "goods, wares and merchandise" when used in the Statute of Frauds meant every species of property which is not real estate or freehold, and included whatever was not embraced by the words "lands, tenements, and hereditaments." Thus, a contract for the sale of corporate stock was held to be a contract for the sale of "goods, wares and merchandise."

The terms used in the Kansas statute are sufficient to include, at the least, all tangible items which are articles of commerce. Abstracts are, obviously, goods which an abstracter is specifically licensed to sell. An abstract is an article of commerce, which an abstracter is licensed to prepare, compile and sell, and which, by virtue of K.S.A. 40-231, an insurance company may not sell. This prohibition is no less applicable merely because the business of abstracting is itself subject to separate statutory regulation.

Yours very truly,


VERN MILLER
Attorney General

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