



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

August 22, 1975

ATTORNEY GENERAL OPINION NO. 75-337

Mr. John Ball
Director
Kansas Real Estate Commission
535 Kansas Avenue
Topeka, Kansas 66603

Re: Real Estate Brokers--License Requirements--Rules
and Regulations

Synopsis: Real Estate Commission pursuant to K.S.A. 1974
Supp. 58-3006 and 58-3008 is without authority to
establish separate classes for the purpose of
grading license examinations.

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Dear Mr. Ball:

You have requested an opinion from this office relative to whether the real estate commission under present statutory law has the authority to establish separate and unequal grading requirements for certain classes of real estate broker applicants taking the mandatory examination for licensure.

K.S.A. 1974 Supp. 58-3006 provides in pertinent part:

"(b) In addition to the requirements of subsection (a), each applicant for an original license as a real estate broker shall have been licensed and actively engaged in the business as a real estate salesman, in this or any other state, for a period of at least two (2) years during the five (5) years immediately preceding the date of the application: *Provided, That the commission may accept in lieu of two (2) years experience as a real estate salesman proof of equivalent experience.*"
[Latter emphasis supplied.]

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Also, K.S.A. 1974 Supp. 58-3008 provides in part:

"(a) *General.* Each applicant shall submit to a written examination to be conducted by the Kansas real estate commission in such form and *under such rules and regulations as the commission may prescribe*, by which it may determine his competence and his general knowledge of the customs of the real estate business and the law of Kansas concerning real property, conveyances, mortgages, agreements to sell, agency, contracts, leases, and the provisions of this act. The commission shall provide and administer an examination appropriate for applicants for broker's licenses different from or in addition to that administered in applicants for salesmen's licenses. [Latter emphasis supplied.]


You advise that at the present time all broker applicants are required to achieve a score of at least sixty percent (60%) on their license examination. However, the commission is contemplating adoption of a policy as per its authority under K.S.A. 1974 Supp. 58-3008 which would require a separate and higher passing grade for applicants which the commission has accepted under the "equivalent experience" provision pursuant to K.S.A. 1974 Supp. 58-3006(b); i.e., such applicants would have to achieve at least a seventy percent (70%) score as opposed to the lesser requirement for all other applicants.

It is clear that each broker applicant must acquire two (2) years of experience as a real estate salesman, and it is left to the discretion of the Board whether it will accept other experience in lieu of this specific requirement. In either case it is obvious that the Legislature intended that applicants otherwise qualified to take the broker examination be on an equal footing at least with respect to their experience since this requirement pivots primarily on the simple calculation of time, and the process designed to achieve that objective was left to the Commission's discretion vis-a-vis its initial study of the applicant's experience. However, under the proposed grading system it appears that the commission desires to compensate for what must be a differentiation in qualification arising out of the present test employed by the board for equivalent experience.

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Thus, it is the opinion of this office that the Legislature by providing for the experience requirement as it did intended to place all applicants in a single qualifying category based on specific experience, and the logical extension of that proviso is that the examination be administered equally and uniformly to the entire class. Accordingly, any employment of a dual grading system keyed to experience requirements already defined and provided for by statute would be a classification unanticipated and unauthorized by the Legislature and consequently without lawful foundation.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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