



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 3, 1976

ATTORNEY GENERAL OPINION NO. 76-162

Mr. John Ball, Director
Kansas Real Estate Commission
Room 212, 535 Kansas Avenue
Topeka, Kansas 66612

Re: Real Estate Brokers' License Act--Investigative
Authority--Antitrust Activities

Synopsis: The Real Estate Commission is lawfully empowered and under obligation to assist the Office of the Attorney General in its investigation of antitrust violations by certain licensees under its jurisdiction.

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Dear Mr. Ball:

You request on behalf of the members of the Real Estate Commission an opinion from this office relative to the legality and propriety of the investigation conducted by your agents recently at our request. You will recall our solicitation of your assistance in investigating the records and files of certain real estate brokers in Johnson County for possible antitrust violations. We now understand that the commission members ask whether their agency is legally empowered to conduct such investigations and whether it is a proper function of their organization.

Your attention is directed to the Commission's own regulation K.A.R. 86-3-10 which provides:

"Each licensed broker is required to retain in his files for a period of at least five years true copies of all business books, records, contracts, closing statements and

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correspondence regarding any real estate transaction he has handled. Such records shall be opened to inspection by the commission and its duly authorized agents at all times during regular business hours at the brokers usual place of business."

It is clear from the foregoing that the Commission is empowered by its own regulation to examine the business records of all real estate brokers under its jurisdiction so as to effectively and properly enforce the provisions of Article 30, Chapter 58, of Kansas Statutes Annotated. Coupled with this investigative authority is the Commission's patent duty to regulate and supervise at all times the real estate operations of both licensed brokers and salespeople. That the objective of this charge is to protect the people of this state warrants no review here. Suffice it to say that this obligation unequivocally mandates action by the Commission to maintain constant surveillance of its licensees to insure that the laws of this State are enforced.

As stated, *supra*, the instant case concerned the investigation by the Commission of certain activities in Johnson County which we suspect violate Kansas' Restraint of Trade Laws. We think it important that your attention be directed to the provisions of K.S.A. 50-109 wherein it mandates:

". . . [I]t shall be the duty of all state and county officials having notice and knowledge of any violation of the provisions of this act to notify the county attorney of their respective counties and the attorney general of the state of the fact of such violation, and to furnish them with the names of any witnesses by whom such violations can be proved"

There can be no doubt that this language manifests legislative intent to require action by public officials to actively assist with the elimination of antitrust violations. The resultant, logical corollary extends that duty to include assisting other public officials in pursuit of this common goal. That this responsibility includes investigating for the state attorney general is without question.

It is important to note further that in providing investigative assistance to this office the Commission was at the same time

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meeting its own obligation to pursue suspected activities which could ultimately warrant license suspension or revocation which is certainly a possibility in the instant case. K.S.A. 1975 Supp. 58-3015.

Accordingly, it is the opinion of this office that the Real Estate Commission in assisting the office of the Attorney General with the investigation of business operations of certain licensees suspect of violating antitrust laws of this state did so with full authority under the laws of this state, and its actions were a proper exercise of its administrative authority. And, further, had the Commission acted otherwise it would have ignored its patent responsibility to fully serve the people of this state by regulating and supervising the real estate industry to the end that all persons so licensed shall comply with the law.

Yours very truly,



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