



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

August 15, 1977

ATTORNEY GENERAL OPINION NO. 77- 278

Mr. John C. Powell  
Director  
Kansas Real Estate Commission  
535 Kansas Avenue - Room 1212  
Topeka, Kansas 66603

Re: Personal and Real Property--Real Estate Brokers and  
Salesmen--Exemptions to Kansas Real Estate Brokers'  
License Act

Synopsis: Irrespective of whether a "new home builder" owns the  
property upon which he is constructing a house, K.S.A.  
58-3003 (i) exempts the builder and not his employees  
from the provisions of the Kansas Real Estate Brokers'  
License Act.

\* \* \*

Dear Mr. Powell:

You request the opinion of this office whether new home builders  
who do not actually own the property upon which they construct  
new houses still qualify for the exemption to the Kansas Real  
Estate Brokers' License Act (K.S.A. 58-3001, *et seq.* hereinafter  
referred to as the "Act.")

As you accurately noted in your letter, this office had occasion  
earlier to rule that employees of new home builders were not exempt  
from the requirements of the Act.<sup>1</sup> We have reviewed that opinion

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1. See Attorney General Opinion dated August 18, 1971,  
addressed to Mr. John Ball, Director, Kansas Real Estate Commis-  
sion and attached hereto.

Mr. John C. Powell  
Page Two  
August 15, 1977

and find no reason why it should now be changed. However, you point out that the first paragraph of that opinion appears to direct the focus of the conclusion expressed therein to the employer who is also "owner of the real property on which the new homes are constructed." Thus you ask whether sufficient distinction exists between the new home builder who owns title *ab initio* to the property he is building upon and one who does not to amend or alter our previous position.

The exemption to the Act here concerned pivots upon the express provisions of K.S.A. 58-3003 which in part provides thus:

"The provisions of this act shall not apply to the following:

\* \* \*

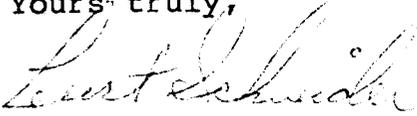
"(i) any person, partnership, association or domestic corporation whose principal business is the actual construction of new homes and the sale thereof."

The above language appears clear and unambiguous. Nothing therein manifests an intent by the legislature to qualify this particular exemption to the Act by requiring the new home builder to own the property he is constructing a house upon. The only elements which must be carefully considered is whether the individual, etc., seeking the exemption is in the actual construction and sale of new homes and that such activity is his principal business.

Accordingly, it is the opinion of this office that whether a new home builder owns the property upon which he is building or not is of no significance insofar as the application of K.S.A. 58-3003(i) is concerned. If our earlier opinion appeared to create ambiguity in this regard it is so modified as is consistent with the conclusions noted herein.

Further, in response to your second question regarding this exemption, we know of no circumstances at this writing which would permit employees of new home builders to enjoy the same exempt status as their employers short of amendment to the Act by the legislature.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj