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October 18, 1978

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ATTORNEY GENERAL OPINION NO. 78- 338

Mr. John C. Powell  
Director  
Kansas Real Estate Commission  
12th Floor - 535 Kansas Avenue  
Topeka, Kansas 66603

Re: Personal and Real Property--Real Estate Brokers and  
Salesmen--Licenses Renewal and Fees

Synopsis: 1) A "pass notice" made to comply with statutory re-  
quirements for license can be used by the Commission  
as a temporary license.

2) License fees collected during the calendar year  
apply to licenses for the year in which they are issued.

3) Applicants receiving licenses in December may pay  
renewal fee on date initial license is received without  
being subjected to penalty for late filing of renewal  
application.

\* \* \*

Dear Mr. Powell:

You advise that the Kansas Real Estate Commission for certain administrative reasons has followed until recently a policy which provided that individuals having successfully passed the licensing exam in the last quarter of the calendar year were not issued the statutorily prescribed license until the beginning of the next succeeding calendar year. Thus, for example, a candidate passing the examination in October, 1978 and successfully completing the same would not then receive a license until January, 1979. However, the Commission has now decided that successful examinees should be given the option of receiving the license

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under the previous policy or requesting immediate issue of the license upon compliance of all statutory requirements. The Commission now has decided that all successful applicants may practice using the "pass notice furnished by Educational Testing Service."

First, you inquire whether the Commission may authorize an individual to practice as a real estate broker or salesman with a "pass notice" until such time as a formal license can be issued. Your attention is directed to the provisions of K.S.A. 58-3004:

"No person, partnership, association or corporation shall engage in, or carry on or advertise, or hold himself or herself, itself or themselves out as engaging in or carrying on the business of or act in the capacity of a real estate broker or a real estate salesman within the state of Kansas without first obtaining a license as a real estate broker or a real estate salesman, as provided in this act: *Provided, That this section shall not apply to partnerships, associations or corporations whose members, officers and employees are licensed as provided in K.S.A. 58-1106.*"

K.S.A. 58-3009 provides thus:

"The Kansas real estate commission shall issue a license as real estate broker or real estate salesman to each applicant who shall be duly qualified under, and who shall comply with, all provisions of this act and the rules and regulations of the commission adopted pursuant to it. *The form of license shall be prescribed by the Kansas real estate commission.* It shall show the name and address of the licensee and, in the case of a real estate salesman, the license shall show the name and address of the real estate broker by whom the salesman is employed. Each license shall bear the seal of the commission and such other information as shall be prescribed by the commission. The commission shall prepare and deliver to each licensee a pocket card bearing the same information as appears on the license itself." [Emphasis added.]

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Clearly then, a "license" must be issued before a broker or salesman can conduct such activities as are delineated at K.S.A. 58-3004. What is also apparent is the legislature has given the Commission discretion to prescribe the form of such license, but which must contain certain minimum requirements: *i.e.*, licensee's name and address; name and address for a salesman's broker employer; and, the seal of the Commission. To the extent that the "pass notice" above described can be made to comply with the minimum statutory requirements, it is my opinion the Commission is cloaked with the necessary discretion and authority to permit such a "pass notice" to be used as a temporary license pending issuance of a formal license.

Next, you ask whether the Commission violates state law by accepting moneys for a license in the last quarter of the calendar year from qualified applicants when a formal license will not be issued until the next following year. In other words you suggest the Commission may be assessing fees for licenses which it does not issue.

K.S.A. 1977 Supp. 58-3014 authorizes the Commission to collect twenty-five dollars for a broker's license and fifteen dollars for a salesman's license at the time application for license is submitted. Such fees pay for licenses which by operation of law expire on December 31 of the year for which it is issued unless renewed. Under the new policy permitting qualified applicants to practice using a "pass notice" as a temporary license, the fee paid in the last quarter of the calendar year is for the temporary license, otherwise the fee collected could be credited only to the license when ultimately issued. In other words, if a temporary license is not issued, then the amount collected in November or December could be applied only to the license issued presumably in the following January.

Last, you indicate that since some individuals may now desire to secure licenses in December, a potential problem appears in that such licensees will perforce be unable to satisfy the renewal license application requirements established by K.S.A. 1977 Supp. 58-3014(a) thus subjecting themselves to a fifty dollar penalty fee. You ask whether the Commission may waive the penalty under such circumstances.

As you are aware, the Act anticipates a twelve month licensing process. K.S.A. 1977 Supp. 58-3008 and K.S.A. 58-3009. However, K.S.A. 1977 Supp. 58-3014(a) if construed and applied literally seemingly impairs that function. K.S.A. 1977 Supp. 58-3014(a) provides in pertinent part thus:

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". . . Every license issued hereunder shall expire on December 31 of the calendar year for which it is issued, but such license may be renewed upon payment of an annual fee of not more than twenty-five dollars (\$25) for each real estate broker and an annual renewal fee of not more than fifteen dollars (\$15) for each real estate salesman. If such renewal fee is paid on or before November 30 of the year preceding the year for which the license is to be renewed. . . . Upon fixing said fees, the commission immediately and before November 30 of each year shall notify all active real estate licensees of the fees so established. Failure to remit the annual fee when due will automatically cancel such license, except that any licensee failing to pay the annual renewal fee when due may have such license reinstated and renewed by the payment of the annual fee and an additional fee of fifty dollars (\$50), if such fees are remitted not later than June 30 of the year following the renewal date."

Pursuant to the above language, any license issued then in December is cancelled *ab initio* by operation of law.

It has long been a rule of statutory construction in this jurisdiction that the legislature intended statutes to be given reasonable construction so as to avoid unreasonable or absurd consequences. *Continental Baking Co. v. Woodring*, 55 F.2d 347, affirmed 52 S. Ct. 595, 286 U.S. 352, 76 L. Ed. 1155, 81 A.L.R. 1402 (D.C. Kan. 1932). The Kansas Supreme Court in *State v. Summer*, 169 Kan. 516, 219 P.2d 438 (1950) observed:

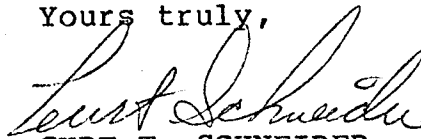
"When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law."

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In *Whitehead v. State Labor Department*, 203 Kan. 159, 453 P.2d 11 (1969) the Court opined that "[o]nce legislative intent is ascertained, it should be given effect, even though the literal meaning of the words used in the enactment is not followed."

As was noted above the legislature intended a year-round real estate licensing capability but to provide so would require the issuance of a cancelled license to December licensees, a result as unreasonable as it is absurd. It appears that an affirmative duty to submit the necessary fee "when due" is imposed upon renewal applicants by K.S.A. 1977 Supp. 58-3014(a). Thus this administrative time scheme appears designed to induce under threat a timely response which realistically implies that licensees failing to meet this obligation do so at their own discretion. In view of this it would seem both reasonable and fair to conclude that the terms "when due" as employed in K.S.A. 1977 Supp. 58-3014(a) can be construed in so far as concern licensees initially licensed in December to mean at the time they first are able to comply with a renewal requirement. Thus individuals receiving initial real estate licenses after November 30 and before January 1 may be issued that license without the payment of the prescribed penalty otherwise applicable to renewals issued during that period.

Yours truly,



CURT T. SCHNEIDER  
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