



STATE OF KANSAS

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June 26, 1979

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ATTORNEY GENERAL OPINION NO. 79-128

Mr. John C. Powell  
Director  
Kansas Real Estate Commission  
535 Kansas Avenue  
Topeka, Kansas

Re: Personal and Real Property--Real Estate Brokers and  
Salesmen--Grounds for Suspension or Revocation of  
Licenses

Synopsis: Provided he acts with the utmost good faith and  
strictly avoids misrepresentation, a broker may offer  
an unconditional gift certificate to any person who  
lists real estate for sale upon a standard listing  
contract.

Likewise, a real estate broker does not violate any  
statute or regulation of this state in giving a  
gift certificate to his employees as part of an  
"incentive sales program."

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Dear Mr. Powell:

Pursuant to an inquiry from counsel for a licensed real estate  
broker, you request our opinion as to whether a broker violates  
any statute or regulation of this state in offering an uncon-  
ditional gift certificate (good for a promotional tour package  
for room accommodations in Las Vegas, Nevada) to any person who  
lists real estate for sale upon a standard listing contract.

Mr. John C. Powell  
Page Two  
June 26, 1979

The following practices are included among the grounds for suspension or revocation of a real estate broker's license, as prescribed by K.S.A. 58-3015:

"(15) soliciting, selling, or offering, for sale, real property by offering 'free lots,' or conducting lotteries, or contests or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property; or

. . . .

"(17) performing any act or conduct whether of the same or a different character hereinabove specified, which constitutes or demonstrates bad faith, incompetence or untrustworthiness, or dishonest, fraudulent or improper dealing . . . ."

It does not appear that the proposed gift certificate would fall within the language of K.S.A. 58-3015(15), since it would not be offered for the purpose of influencing a purchaser or prospective purchaser of real property. Similarly, where the gift certificate is unconditional and given to anyone who executes a standard listing contract, it would not appear to constitute or facilitate "improper dealings," or otherwise violate K.S.A. 58-3015(17).

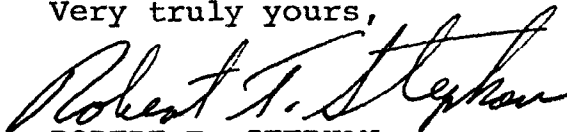
In Graber v. Tannant, 173 Kan. 577, 581, the Kansas Supreme Court stated that a real estate broker is bound to act with "the utmost good faith" toward his principal. We conclude that, so long as a real estate broker acts with the utmost good faith and strictly avoids misrepresentation, he may offer an unconditional gift certificate to any person who lists real estate for sale upon a standard listing contract.

You also request our opinion as to whether a real estate broker may give the same gift certificates to his employees as part of an "incentive sales program." So long as said "program" does

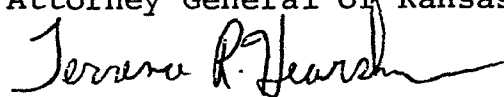
Mr. John C. Powell  
Page Three  
June 26, 1979

not constitute "gambling" or a "lottery" and otherwise complies with the criminal code, it would not, in and of itself, constitute an unlawful or prohibited act.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm