



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 18, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80-136

Mr. J. Paul Flower
Director
Kansas Real Estate Commission
535 Kansas Avenue, Rm. 1212
Topeka, Kansas 66603

Re: Personal and Real Property--Real Estate Brokers
and Salesmen--Reinstatement of Deactivated Licenses

Synopsis: The examination requirement, relating to real estate brokers and salespersons with deactivated licenses, prescribed by Section 16(c) of the Real Estate Brokers' and Salespersons' License Act [1980 Senate Bill No. 519, §16(c)] applies only to licenses which remain deactivated for a period of more than two continuous years after creation of the "deactivated" classification by the Act. Cited herein: 1980 Senate Bill No. 519, K.A.R. 86-1-6.

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Dear Mr. Flower:

You request our opinion as to how certain "inactive" licensees, whose licenses are currently held by the Kansas Real Estate Commission, should be treated with respect to the re-examination requirement imposed by Section 16 of 1980 Senate Bill No. 519. Said section provides as follows:

"(a) The license of a broker or salesperson may be deactivated upon request of such broker or salesperson and return of the license to the commission. Such license shall be held in the office of the commission for the period that it remains deactivated.

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"(b) A license which is deactivated and which is not suspended or revoked may be reinstated at any time during the period for which the license is issued and may be renewed upon an application therefor and the payment of the renewal fee. Compliance with section 13 is not required for renewal of a license which is deactivated.

"(c) No license which is deactivated shall be reinstated without the applicant's compliance with the requirements of section 13 for the immediately preceding license period and payment of the fee for reinstatement prescribed by section 30. Any license that has been deactivated for a continuous period of more than two (2) years shall be reinstated only if the licensee has met the examination requirement for an original applicant.

"(d) A broker whose license is deactivated need not maintain the place of business required by section 27.

"(e) A licensee whose license is deactivated shall not be entitled to act in any capacity for which a license is required until his or her license has been reinstated." (Emphasis added.)

Your question is whether the underscored portion of the above-quoted statute operates retrospectively, so as to impose the examination requirement upon real estate brokers and salespersons desiring to reinstate licenses which have been "deactivated" for a continuous period of more than two years on July 1, 1980 (the effective date of the act).

Senate Bill No. 519 enacts the "Real Estate Brokers' and Salespersons' License Act" and repeals existing statutes relating to the licensure of brokers and salespersons. The existing statutes make no provision for "deactivating" licenses, but, notwithstanding this fact, you state that the Commission has, for several years, allowed individuals to send their licenses to the Commission office, where said licenses are "held on an 'inactive' status." You also state that the Commission "has informed licensees that, as long as the license is renewed each year, they may keep the license inactive and reactivate it whenever they wish."

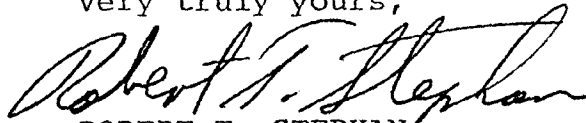
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The only Real Estate Commission regulation which refers to an "inactive" license is K.A.R. 86-1-6, which regulation provides as follows:

"Subject to the approval and investigation by the commission, an applicant may be licensed as a salesman and as a broker for any current year, provided one of the licenses is on an inactive status. An "inactive" license is defined as a license which has been granted to an applicant but which is held in the office of the Kansas real estate commission. (Authorized by K.S.A. 74-4202; effective Jan. 1, 1974.)"

In our judgment, the examination requirement imposed by Section 16(c) of 1980 Senate Bill No. 519 must be construed as applying only prospectively, to licenses which remain deactivated for a period of more than two years after the effective date of the act, and to licenses which are deactivated after the effective date of the act and remain deactivated for a continuous period of more than two years. To apply the requirement to licenses which have been "deactivated" (pursuant to an administrative practice of questionable validity) for the applicable period of time on the effective date of the act would give retrospective operation to the statute. An intention to give such a retrospective operation to an act must be unequivocally expressed by the legislature, Beeler & Campbell Supply Co. v. Warren, 151 Kan. 755, 760 (1940), and, in our judgment, such an unequivocal expression of intent is not present in Section 16 of 1980 Senate Bill No. 519. Rather, in imposing the examination requirement, it seems clear that the legislature intended that such requirement would apply only to licenses which remain "deactivated" for a period of more than two continuous years after creation of the "deactivated" classification by the statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

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