



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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November 25, 1981

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ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 81- 261

The Honorable Bill Goering  
State Representative - Seventy-Third District  
536 East Marlin  
McPherson, Kansas 67460

Re:           Automobiles and Other Vehicles -- Licensure of  
              Vehicle Sales and Manufacture -- Mobile Homes

Synopsis: 1981 Senate Bill No. 430 (L. 1981, ch. 48) is applicable to licensed real estate brokers and salespersons regularly participating in the sales, negotiation of sales, or the bringing together of parties to sales of mobile homes. Where such a transaction is a single or isolated occurrence, a real estate broker or salesperson need not comply with the requirements of 1981 Senate Bill No. 430. Cited herein: K.S.A. 1980 Supp. 8-126, 8-2401, 8-2402, 58-3034, 58-3035, K.S.A. 79-340, L. 1981, ch. 48.

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Dear Representative Goering:

You request an opinion of this office regarding the scope of 1981 Senate Bill No. 430 (L. 1981, ch. 48), amending K.S.A. 1980 Supp. 8-2401 et seq., an act concerning dealers and manufacturers of mobile homes. K.S.A. 1980 Supp. 8-2401 et seq., as so amended [hereinafter "Act"], regulate the motor vehicle and mobile home sales industries by requiring compliance with certain licensing and accounting procedures. You wish to know if this act can be construed as including persons in the business of selling real estate as a licensed broker or salesperson pursuant to K.S.A. 1980 Supp. 58-3034 et seq.

K.S.A. 1980 Supp. 8-2401 et seq., as amended, defines "vehicle dealers" and "mobile home dealers". For purposes of your inquiry, the Act defines "mobile home dealer" as follows:

"(e) 'Mobile home dealer' means any person who: (1) for commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in mobile homes; or (2) for commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in mobile homes for other persons as an agent, middleman or negotiator; or (3) for commission, money or other thing of value is engaged in the business of bringing buyers and sellers of mobile homes together."  
K.S.A. 1980 Supp. 8-2401, as amended by L. 1981, ch. 48, §1.

The real estate licensees about which you inquire would include brokers, associate brokers and sales persons as those terms are used in the Real Estate Brokers' and Salespersons' License Act. K.S.A. 1980 Supp. 58-3035 defines these terms and lists the specific activities covered by the Act. Generally speaking, these terms would include persons who, for compensation and on behalf of the owner of real estate, engage in the sale, exchange, purchase or lease of real property. Also included under this act are the activities of negotiating a sale, purchase or other transfer of real estate, offering to sell or purchase real estate and the auctioning of such property.

You advise that licensed real estate brokers and salespersons in your area occasionally negotiate the sale of an interest in a mobile home. You do not specify whether the mobile homes being sold are legally viewed as real or personal property. Certainly, depending on the facts of each case, a mobile home might be considered real or personal property. For purposes of some statutes such legal distinctions are critical. To illustrate: K.S.A. 79-340 declares a mobile home to be "personal property" for taxation purposes unless title to the mobile home and the real property upon which it rests are titled in the same person and the mobile home is on a permanent foundation. Similarly the real estate brokers and salespersons law covers only transactions involving "real estate" as defined in K.S.A. 1980 Supp. 58-3035. However, such distinctions are not important in applying the mobile home dealers licensures laws. Plainly stated, if a mobile home (as defined in K.S.A. 1980 Supp. 8-2401, as amended by L. 1981, ch. 340, §1(m) and K.S.A. 1980 Supp. 8-126, and

amendments thereto) is sold or transferred by persons defined in the mobile home dealers' licensure laws, a mobile home dealers' license is required. Of course if the mobile home is determined to be personal property the real estate licensure laws are inapplicable. However, since the mobile home dealers licensure laws do not specifically exempt licensed real estate brokers and salespersons, any person whether licensed or not as a real estate broker or sales person transferring, selling or negotiating a sale or transfer for commission is subject to the terms of the mobile home dealer licensure law.

If the mobile home is determined to be real estate, the negotiated sale or transfer might subject those persons receiving compensation for their services in transferring or selling the mobile home to both the real estate brokers and salespersons licensure act and the mobile home dealers licensure law.

Although it may seem unusual to require certain persons to acquire two licenses, such a requirement is not entirely unreasonable. Specifically, the legislature did not see fit to exclude licensed real estate brokers or salespersons from the requirements of 1981 Senate Bill 430. Moreover, the public policy reasons for the enactment of such legislation, namely the desire to insure honesty and fair dealing in the mobile home industry, and the licensing standards incorporated in the Act, which include financial security and bonding requirements, suggest that licensure requirements for these two professions are not necessarily identical or duplicative. Hence, we are not prepared to read into 1981 Senate Bill No. 430 an implied exception for licensed real estate brokers or salespersons who engage in the mobile home industry.

We note, however, that to be subject to the mobile home dealers licensing requirements, the person must "be engaged in the business" of selling or negotiating the sales of mobile homes. Determining what level of involvement or representations would constitute being "engaged in the business" is a factual question, although, the use of the term "engaged in the business of" suggests something more than mere casual involvement in the described field. This term has not been judicially defined in Kansas with regard to this type of situation, but it is generally held that "the performance of a single transaction, or even a number of isolated transactions, pertaining to a licensed occupation or profession, will not be considered as engaging in or carrying on such occupation or profession within the purview of the law requiring the license." 51 Am.Jur.2d, Licenses and Permits, §2, (1970). See also, 93

A.L.R.2d 90, 94 (1964) for a list of cases following this rule. The general exceptions to this rule are stated in 51 Am.Jur.2d, Licenses and Permits, §2, (1970) as follows:

"The 'single or isolated transaction' rule is subject to an exception where an intent to engage permanently in a licensed occupation or business is established by other material circumstances surrounding the performance of the single or isolated transactions. And legislative purpose, as judicially interpreted, has evolved into another limitation upon the rule. An occupational license tax may be imposed either as a means of regulation or as a source of revenue, and when construed to be a regulatory measure enacted under the police power, the courts appear more inclined to find that a single or isolated act jeopardizes the public health or safety." (Emphasis added.)

This latter exception to the single or isolated transaction rule was recognized by the Kansas Supreme Court in State v. Cotner, 87 Kan. 864, (1912), where it was determined that each specific act of practicing medicine without a license was a separate and punishable violation of the regulatory statute. The Court explained its decision with the following language:

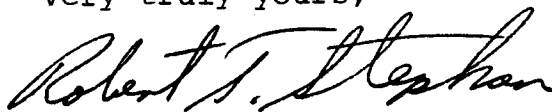
"[T]he statute has not remitted us to any general understanding of the meaning of the word practice. By virtue of the legislative definition, to prescribe, for a fee, any drug for the relief of any disease of another person, is to practice medicine. It is not necessary that this be done frequently, customarily, or habitually. One isolated instance is sufficient and the penalty is affixed to each offense. The same is true of surgical operations and other specific acts denounced by the statute. Besides this, any fair consideration of the mischief which the legislature sought to remedy leads to the conclusion that the state board of medical registration and examination was not created for the simple purpose of attaching its badge to professional careers. The life, health, and financial resources of individual men, women, and children were to be protected from ignorance and imposture. Each repetition is a new peril, and instead of applying to a continuous course of conduct, the

statute specifies and condemns each impulse, to the very end that it may not unite with others in swelling a common stream of action." State v. Cotner, supra at 876.

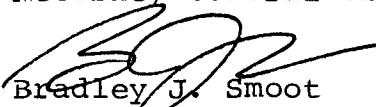
This decision speaks with particular authority to those situations where the public health and safety are jeopardized by the actions of unlicensed individuals, and we believe that it should not be applied here for that reason. K.S.A. 1980 Supp. 8-2402, as amended by L. 1981, ch. 48, §2 states that the public policy of the state is "to provide for fair and impartial regulation of those persons engaged in manufacturing, distributing or selling of vehicles or mobile homes." This Act is regulatory and designed fundamentally for the purpose of protecting consumers from the unscrupulous elements of the business community. It was not enacted for the primary purpose of insuring public health and safety. This fact alone brings this situation outside the scope of the exception generally, and the Cotner, supra, decision specifically. A determination that every single transaction regarding mobile homes is within the scope of this Act would lead to absurd results and would be beyond the language of the statutory definition of "mobile home dealer," since those persons involved in an isolated transaction are not engaged in such business. Thus, it is our opinion that real estate brokers engaging in single or isolated transactions are not "mobile home dealers" within the scope of this Act unless it can be shown that some intent exists on the part of the broker or salesperson to engage permanently in the business of a "mobile home dealer". Where the real estate broker's activities regarding mobile homes are on a regular basis the transaction would no longer be single or isolated and the broker would obviously be within the scope of this Act.

In summary, it is the opinion of this office that 1981 Senate Bill No. 430 (L. 1981, ch. 48) is applicable to licensed real estate brokers and salespersons regularly participating in the sale, negotiation of sales, or the bringing together of parties to sales of mobile homes. Where such a transaction is a single or isolated occurrence, a real estate broker or salesperson need not comply with the requirements of 1981 Senate Bill No. 430.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General