



83L-51898
Circuit Court, Court Ct., Ill.
C.B. v. Clayton

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

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ATTORNEY GENERAL OPINION NO. 83- 115

Dennis W. Moore
Johnson County District Attorney
Johnson County Courthouse
P. O. Box 728
Olathe, Kansas 66061

Re: Crimes and Punishments -- Trading Stamp Act --
Inapplicable to Certain Coupons and Devices

Personal and Real Property -- Real Estate Brokers
and Salesmen -- Prohibited Acts

Synopsis: The Sears "Home Buyers Savings Program" is not violative of the Trading Stamp Act, K.S.A. 21-2801 et seq. However, it would be a violation of the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 1982 Supp. 58-3034 et seq., for a real estate licensee or its parent company to offer such program contingent upon the listing, purchase or leasing of real estate through the licensee. Cited herein: K.S.A. 21-2801, 21-2803, K.S.A. 1982 Supp. 58-3034, 58-3035, 58-3062.

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Dear Mr. Moore:

You have requested an opinion from this office regarding the legality of the proposed "Home Buyer's Savings Program" (hereinafter referred to as "program") to be offered in Kansas by Coldwell Banker's parent corporation, Sears, Roebuck and Company (hereinafter "Sears"). Essentially, the program would entitle purchasers of real estate through Coldwell Banker to receive a "home buyer's savings book" which would contain coupons redeemable for discounts at Sears stores. On May 20, 1983, counsel for Coldwell Banker provided this office further information as to the operation of the program, stating as follows:

"Subsequent to the closing of a real estate sale transaction handled by a Coldwell Banker licensee, the purchaser would receive a letter from Sears congratulating them on their new home purchase and providing them with an Idea Book and a Home Buyer's Savings Book. The Idea Book, a copy of which I have enclosed, contains suggestions for home improvements. The Home Buyer's Savings Book, a copy of which is also enclosed, contains discount coupons and instructions for their use. You will note that the Savings Book contains certain references to Coldwell Banker sales associates and areas for their signatures. It is my understanding that the Savings Book which would be used in Kansas would not utilize these references or signature requirements. The distribution and redemption of the coupons would be handled entirely by the Sears organization. Except for providing Sears with the mailing list of purchasers through normal business channels, the Coldwell Banker licensee would not be involved or assist with the program.

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"Under the proposed program, the only involvement which the Coldwell Banker licensee might have would be first, providing the customer lists from which Sears initiates contact with the purchaser and second, the potential discussion by Coldwell Banker licensees and their agents with prospective clients. Providing a customer list is a normal business activity which is routinely required by the Sears' organization. The customer list is valuable to Sears for a number of reasons totally unrelated to the current program. If the program were in operation, it would be realistic to expect some discussion to occur between Coldwell Banker licensees and prospective customers even though it was not actively promoted. However, such discussions would necessarily indicate that Sears was offering the coupons and not the licensee.

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"In the program proposed by Sears, the Coldwell Banker licensee would not be providing or financially participating in the coupons which Sears proposes to distribute and redeem."

First, we examine whether the proposed program may be violative of K.S.A. 21-2801 et seq., the Kansas Trading Stamp Act. This Act, which prohibits use of trading stamps in Kansas, is inapplicable to certain coupons given by retailers. Specifically, K.S.A. 21-2803(b) provides:

"This act shall not apply to any coupon, ticket, certificate, card or similar device which is issued, distributed, furnished or redeemed:

. . . .

"(b) By a retailer, when such coupon, ticket, certificate, card or similar item is redeemable by the retailer, with or without accompanying cash, for any product which the retailer normally sells in its usual course of business."

The program contemplated by Sears involves redemption of coupons, with accompanying cash, for products sold by Sears in the general and usual course of business. Therefore, in our opinion, the proposed program is within the scope of K.S.A. 21-2803(b) and not violative of the Trading Stamp Act. Cf., State, ex rel. Stephan v. Pepsi-Cola Gen'l. Bottlers, Inc., 232 Kan. 843 (1983) and State, ex rel., v. American Savings Stamp Co., 194 Kan. 297 (1965).

Another area of concern involves the Real Estate Brokers' and Salespersons' License Act, K.S.A. 1982 Supp. 58-3034 et seq. This Act, which governs licensed real estate brokers and salespersons, provides in pertinent part, thus:

"No licensee shall:

"(12) Offer or give prizes, gifts or gratuities which are contingent upon a client's listing, purchasing or leasing property."

According to the description of the program provided by counsel and quoted supra, Coldwell Banker licensees would not offer or give the coupons to the purchaser of real estate. Rather, the offer or gift would originate with a non-licensee, Sears.

The restrictions and prohibited acts set forth at K.S.A. 1982 Supp. 58-3062 extend only to licensees under the Act. Licensee is defined at K.S.A. 1982 Supp. 58-3035(f) as "any person licensed under this act as a broker, associate broker or salesperson." Sears, Roebuck and Company does not fall within the scope of the definition of licensee. We recognize

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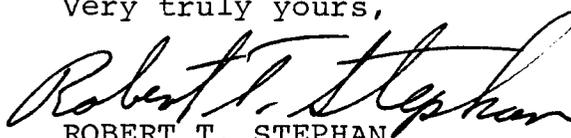
that Coldwell Banker is a licensee under the Act and that the licensee is wholly owned by Sears, Roebuck and Company. However, we are reluctant to extend the prohibitions at K.S.A. 1982 Supp. 58-3002 to individuals or entities not licensed under the Real Estate Brokers' and Salespersons' License Act.

However, there seems to be no question that the program constitutes a gift, prize or gratuity within the meaning of the Kansas law. Thus, the program, if participated in by a licensee, would be in direct violation of K.S.A. 1982 Supp. 58-3062(a) supra, since receipt of the coupons by the purchaser is contingent on purchase of real estate from Coldwell Banker.

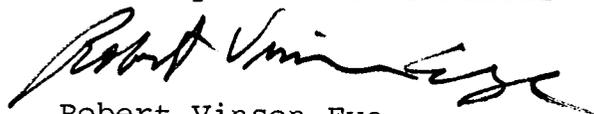
The Coldwell Banker licensee is in a unique and exclusive position to benefit from the program as an inducement to purchase real estate, even though the non-licensee, Sears, would actually conduct the program. Hence, it is our opinion that in order for the licensee, Coldwell Banker, to avoid committing a violation of the Kansas real estate licensing law, both Coldwell Banker and Sears must completely refrain from advertising, promoting or otherwise using the Home Buyers Savings Program in connection with Coldwell Banker prior to the sale, lease or listing of real estate property. Of course, nothing contained herein, prevents Sears from offering the Home Buyers Savings Program for its own benefit. It is only when the gift, prize or gratuity is offered in connection with, and contingent on, doing business with Coldwell Banker that the prohibitions of K.S.A. 1982 Supp. 58-3062 are violated.

In conclusion, the Sears "Home Buyers Savings Program" is not violative of the Trading Stamp Act, K.S.A. 21-2801 et seq. However, it would be a violation of the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 1982 Supp. 58-3034 et seq., for a real estate licensee or its parent company to offer such program contingent upon the listing, purchasing or leasing of real estate through the licensee.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:hle