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July 13, 1984

ATTORNEY GENERAL OPINION NO. 84-70

Jean Duncan
Acting Director
Kansas Real Estate Commission
217 East Fourth
Topeka, Kansas 66603

Re: Personal and Real Property -- Real Estate Brokers
and Salesmen -- Nonresident License

Synopsis: The phrase "a broker licensed pursuant to this act"
found in K.S.A. 58-3040 makes reference to the entire
Real Estate Brokers' and Salespersons' License Act
(L. 1980, ch. 164) and not only to one section of
that Act. Cited herein: K.S.A. 58-3039; 58-3040;
58-3062.

* * *

Dear Ms. Duncan:

The former director of the Kansas Real Estate Commission, Mr.
J. Paul Flower, on behalf of the Commission requested an At-
torney General Opinion regarding interpretation of K.S.A. 58-
3040.

That statute, part of the Real Estate Brokers' and Salespersons'
License Act, provides for licensure in Kansas of nonresidents.
It states in pertinent part:

"(a) A nonresident of this state may be
granted a broker's license if:

"(1) The nonresident is licensed as a broker
in the nonresident's state of residence; and

"(2) Such nonresident meets all requirements imposed by this act on Kansas residents for licensure as a broker, except that the commission may waive the examination requirement for a nonresident who has passed an examination equivalent to that given to Kansas residents and whose state of residence has entered into a reciprocal agreement with the commission as to the issuance of reciprocal licenses.

"(b) A nonresident salesperson or associate broker employed by or associated with a broker licensed pursuant to this act may be granted a salesperson's or broker's license under such broker, if:

"(1) The salesperson or associate broker is licensed as a salesperson or associate broker in the salesperson's or associate broker's state of residence; and

"(2) Such salesperson or associate broker meets all requirements imposed by this act on Kansas residents for licensure as a salesperson or broker, except that the commission may waive the examination requirement for a nonresident salesperson or associate broker who has passed an examination equivalent to that given to Kansas residents and whose state of residence has entered into a reciprocal agreement with the commission as to the issuance of reciprocal licenses."
(Emphasis added.)

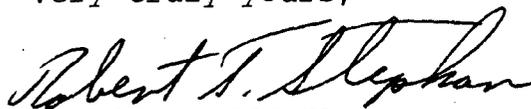
The question raised by this opinion request concerns the proper interpretation of K.S.A. 58-3040(b), and in particular the requirement that a nonresident salesperson or associate broker be "employed by or associated with a broker licensed pursuant to this act," in order to receive a nonresident license. We are informed that the commission has interpreted the phrase "broker licensed pursuant to this act" to mean a broker who holds a nonresident broker's license under the terms of K.S.A. 58-3040(a). Under that interpretation, a nonresident salesperson or associate broker may not receive a Kansas nonresident license unless he or she is employed by or associated with a broker in her or his state of residence who is, in turn, a licensed nonresident broker in Kansas.

In our opinion, this interpretation is overly restrictive and inconsistent with the meaning and sense of the phrase "this act."

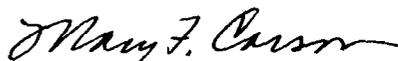
That phrase is used several times in K.S.A. 58-3040 and appears throughout the License Act. In each case, the phrase should be read to refer to the entire Real Estate Brokers' and Salespersons' License Act (L. 1980, ch. 164). For example, under the terms of K.S.A. 58-3040(a)(2) and 58-3040(b)(2), a nonresident broker, associate broker or salesperson must meet "all requirements imposed by this act" as Kansas residents who apply for licensure. This clearly refers to the requirements for licensure imposed by K.S.A. 58-3039, which is part of the entire "act" but which is found in a different section. Similarly, K.S.A. 58-3040(d) states that before a license may be issued to a nonresident, the "applicant must agree in writing to abide by all the provisions of this act with respect to the applicant's real estate activities within this state" Again, this reference is clearly to the entire act (L. 1980, ch. 164) and not just to those provisions of Section 7 which appear in the statute book as K.S.A. 58-3040. A number of different sections of the Act refer to real estate activities within Kansas, in particular K.S.A. 58-3062 (L. 1980, ch. 164, §29). It would be inconsistent with the apparent purpose and intent of the legislature and with the other provisions of the Act to read the phrase "this act" as narrowly as has been suggested. In support of the conclusion, we note that the Kansas Supreme Court has held that the division into chapter, article and sections in the Kansas Statutes Annotated does not have the effect of making separate enactments of a single bill passed by the legislature. See City of Junction City v. Griffin, 227 Kan. 332, 335-336 (1980); Marks v. Frantz, 179 Kan. 638 (1956). The portions of the Real Estate Salespersons' and Brokers' License Act at issue here are all part of a single bill passed by the legislature. Thus the intention of the legislature in making reference to "this act" cannot be held to refer only to one section of the act.

Thus, we are governed by the cardinal rule of statutory construction, to which all other rules are subordinate, that the intention of the legislature must control. That intent is not to be determined from isolated parts or phrases but from a consideration of the entire act. State ex rel. Stephan v. U.S.D. 428, 231 Kan. 579 (1982); State ex rel. Ludwick v. Johnson County, 233 Kan. 79 (1983). Considering the Real Estate Brokers' and Salespersons' License Act as a whole, we are compelled to conclude that the phrase "broker licensed pursuant to this act" found in K.S.A. 58-3040(b) refers to a broker who meets the qualifications for licensure under the terms of the Act, either as a resident or nonresident.

Very truly yours,



ROBERT T. STEPHAN
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Mary F. Carson
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