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ATTORNEY GENERAL OPINION NO. 86- 111

William D. Rustin
County Counselor
Sedgwick County Courthouse
Suite 315
Wichita, Kansas 67203

Re: Personal and Real Property--Real Estate Brokers and
Salesmen--Exemptions From Licensing Requirement

Synopsis: An auctioneer employed by a sheriff to conduct a
tax foreclosure sale is not subject to the
provisions of the Kansas Real Estate Brokers' and
Salespersons' License Act, K.S.A. 58-3034 et
seq. Such auctioneers are exempt as employees
of a political subdivision. Cited herein: K.S.A.
58-3034 et seq.; K.S.A. 58-3035, as amended
by L. 1986, ch. 209, §1; K.S.A. 58-3036, as
amended by L. 1986, ch. 209, §15; K.S.A. 58-3037,
as amended by L. 1986, ch. 209, §16; K.S.A. 1985
Supp. 79-2801, as amended by L. 1986, ch. 379,
§1; K.S.A. 79-2804.

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Dear Mr. Rustin:

You have requested our opinion regarding the Kansas Real
Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034
et seq. Specifically, you inquire whether auctioneers
conducting tax foreclosure sales, pursuant to K.S.A. 79-2801
et seq., must comply with the statutory provisions which
require that real estate brokers and salespersons be

licensed. It is our opinion that an auctioneer acting on behalf of a county sheriff is exempt from such requirements.

The purpose of the license act reflects the special relationship between buyers and sellers of real estate, acting through representative real estate brokers and salespersons. The relationship involves varying degrees of duties owed by the broker, ranging from a duty only to act in an honest, trustworthy, truthful, ethical and competent manner, to that duty owed by a fiduciary. See, e.g., Stevens v. Jayhawk Realty Co., 9 Kan. App. 2d 338 (1984). In other words, given that a broker or salesperson generally acts as an agent of a party to a real estate transaction, a public perception that the broker or salesperson is a neutral party necessitates placing a special degree of responsibility on the representative in order to protect public interests.

This objective is furthered by the licensing requirement of the act, which applies to persons acting as brokers or salespersons. K.S.A. 58-3038, as amended by L. 1986, ch. 209, §2, states that, unless otherwise provided, no person may recover compensation for any act or service for which the act requires a license, unless such person is duly licensed. A broker is defined in K.S.A. 58-3035(e), as amended by L. 1986, ch. 209, §1(e), as a person who advertises or represents himself as being in the business of buying, selling, exchanging, or leasing real estate, or engages in activities "as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate" for compensation. K.S.A. 58-3035(j), as amended by L. 1986, ch. 209, §1(l), defines a salesperson as a person who engages in the activities listed in the definition of "broker," and who works for, but is not, a broker or associate broker.

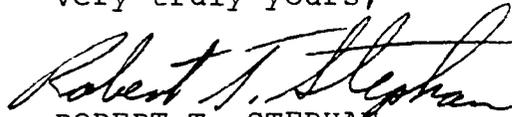
Protecting the public's interest is the underlying purpose of the act. Stevens, 9 Kan. App. 2d, at 344. We believe that this purpose would not be furthered by its application to auctioneers who conduct tax foreclosure sales. It is clear that the act does not apply to a sheriff who conducts the sale. K.S.A. 58-3037(e), as amended by L. 1986, ch. 209, §16(e), states that the provisions of the act shall not apply to:

"Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee."

Notwithstanding the specific exemption for officers and employees of a state's political subdivision in the performance of official duties, the act does not apply because a sheriff does not act on behalf of a party to a real estate transaction, and the public's perception of neutrality is not misplaced. This reasoning would also apply to auctioneers who have been employed by a sheriff to conduct such sales, as authorized by K.S.A. 79-2804. Therefore, we believe that the statutory exemption in K.S.A. 58-3037(e), as amended by L. 1986, ch. 209, §16(e), which in our judgment applies to such auctioneers, complies with the purpose of the act.

In conclusion, it is our opinion that an auctioneer conducting a tax foreclosure sale is not subject to the requirements of the Kansas Real Estate Brokers' and Salespersons' License Act. Such auctioneers are exempt as employees of a political subdivision engaging in the official duties of their position.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm