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
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(1), 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