



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 105

Philip E. Winter
Lyon County Counselor
Courthouse
Emporia, Kansas 66801

Re: Taxation -- Property Valuation, Equalization,
Assessments, Appraisers and Assessment of Property
-- Real Estate Sales Questionnaire; What
Constitutes an Agent

Synopsis: The general laws governing agency apply when
determining who is an agent. Marking the "not
sure" box of the real estate sales questionnaire
will not invalidate the form. Cited herein: L.
1991, ch. 162, §§ 3, 4, 7.

* * *

Dear Mr. Winter:

As Lyon county counselor, you request our opinion on the
following questions regarding House Substitute for Senate Bill
No. 72:

"1. What is required to show that the person filing the
questionnaire is in fact an agent, if that person is not the
grantor or the grantee;

"2. If such an agent files such, is a "not sure" sufficient
answer under the law on the questionnaire?"

Since the statute is silent as to what constitutes an agent, your first question may be resolved by the general law of agency.

"The essential feature of the agency relation is the representative capacity of the agent, and it is one of the characteristics of the relation that the agent steps into the shoes of the principal and acts for him pursuant to the grant of authority vested in him by the principal." 2A C.J.S. Agency § 5 (1972).

"An agency may be created by active consent of the principal and agent, by operation of law, by estoppel, or by ratification. There is no particular mode by which an agency must be established. An agency relationship may be informally created, and usually no particular method or form of expression is required. Accordingly, no particular words are necessary to create an agency relation, and it is immaterial what terms are used or by what name the transaction is called if the facts taken as a whole show that one party is acting for and representing another by his authority and the elements of a valid contract are present. So, an agency arises when one person, the principal, manifests his consent to another, the agent, the latter should act on the former's behalf, or where one person undertakes to transact some business or manage some affair for another by authority and on account of such other person, irrespective of the existence of a formal contract or the receipt of the compensation." 2A C.J.S. Agency § 37 (1972).

Some of the things that may prove the existence of an agency relationship are as follows:

- "1. declarations of mutual intent to enter into the agency relationship;
2. payment of commissions to alleged agent;

3. communication with agent as such;
4. written authority to act as agent." 3
Am.Jur.2d Agency §§ 363, 365 (1986).

The questionnaires "shall not be filed of record by the register of deeds but shall be retained for a period of two years at which time they shall be destroyed. The register of deeds shall in conjunction with the county clerk use the information derived from such questionnaires in preparing the report to the director of property valuation as provided for in K.S.A. 79-1436, and amendments thereto." L. 1991, ch. 162, § 3.

"The questionnaire shall be devised to obtain information regarding the identification and location of the property, name and address of the purchaser, sales price, date of sale, the classification and subclassification to which such property belongs, nature and circumstances peculiar to the sale, whether any personal property was included in the sales price, whether the purchaser assumed any mortgages or liens, loans, leases or taxes, the method of financing, whether any special assessments are levied against the property and such other information as the director of property valuation shall require. No information shall be requested in such questionnaire which would require the disclosure of the interest rate paid by the purchaser or the specific term of any mortgage." L. 1991, ch. 162, § 4.


Finally, the new law provides that "[a]ny person who shall falsify the value of real estate transferred shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100." L. 1991, ch. 162, § 7.

Testimony on March 25, 1991, by David Cunningham, director of the division of property valuation, before the house committee on taxation revealed that the purpose of the questionnaire was to standardize the property valuation form, assist the county appraiser in more accurately determining fair market value, and save the counties money in that they would not have to make numerous attempts through the mail and phone to get this information.

The law requires only that the questionnaire be completed before the register of deeds shall record any transfer of title to real estate or affidavit of equitable interest. There is no mention that if any of the questions are answered as "not sure" that this would nullify the validity of the form. Since the questionnaire was drafted by the director of property valuation, it is our opinion that the director had to anticipate that some of the people filling out the questionnaire would mark the "not sure" box. Therefore, even though the purpose of the questionnaire may not be served in every instance, this is an attempt to assist counties, property owners and property appraisers in obtaining necessary information. If it is determined that the "not sure" box is being abused the director of property valuation has the authority to modify the questionnaire. L. 1991, ch. 162, § 4.

Therefore, it is our opinion that the general laws governing agency apply when determining who is an agent. It is also our opinion that marking the "not sure" box of the real estate sales questionnaire is a sufficient answer and will not invalidate the form.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


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