



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 10, 1975

Opinion No. 75-106

Mr. James N. Cole
Chief Investigator
Johnson County Courthouse
Olathe, Kansas 66061

Dear Mr. Cole:

You requested an opinion from this office concerning the interpretation of K.S.A. 58-2265. More precisely, you questioned in light of the above statute, whether an employee of a savings and loan association who is also an insurance broker may utilize the loan records of that institution to competitively bid against other brokers for the mortgage and casualty hazard insurance required of its borrowers.

K.S.A. 58-2265 provides:

"Whenever the instrument requires that the purchaser, mortgagor or borrower furnish insurance of any kind on real property being conveyed or is collateral security to a loan, the mortgagee, vendor or lender shall refrain from disclosing or using any and all such insurance information to his or its own advantage and to the detriment of either the borrower, purchaser, mortgagor, insurance company or agency complying with the requirements relating to insurance." [Emphasis supplied.]

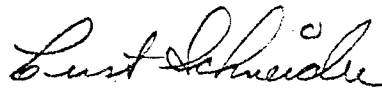
For a violation to exist, there must be a concurrence of both the advantage to the lender, and a detriment to the borrower, purchaser, mortgagor, insurance company, or agency. One without the other is insufficient to sustain a violation.

Mr. James N. Cole
Page Two
March 10, 1975

The controversy in this matter stems from the uncertainty surrounding the meaning on that portion underlined above.

K.S.A. 58-2265 was enacted as section 2 of ch. 298, L. 1961. It is not clear from this section precisely what abuses it was designed to prevent, nor is it apparent from other sections in the bill. It is necessary here, however, only to determine whether the employee's use of records as described above is disclosed or used in any fashion to the advantage of the lender and to the detriment of the borrower. The statute imposes no absolute confidentiality on the insurance information in question, but only prohibits its improper use or disclosure. Certainly, if such information is used or disclosed in aid of any misrepresentation to the borrower or to take commercial advantage of the borrower in any fashion, such could and would doubtless be deemed to be "to the detriment of such borrower" Similarly, any disclosure or use of the information to coerce the borrower in the purchase of insurance to the advantage of the lender would be improper. The statute does not prohibit the ordinary commercial use of such information, however, so long as such use does not inure to the detriment of the borrower. On the basis of the facts described above, we cannot conclude as a matter of law that the practice described above constitutes a violation of K.S.A. 58-2265.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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