



STATE OF KANSAS

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June 5, 1980

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ATTORNEY GENERAL OPINION NO. 80-123

Mr. Dan M. Hannah  
Vice-Chairman  
Kansas Abstracters' Board of Examiners  
Box 6  
Lyons, Kansas 67554

Re: State Boards, Commissions and Authorities--  
Abstracters' Board of Examiners--Rules and Regulations

Synopsis: The Kansas Abstracters' Board of Examiners may not impose (by administrative regulation) "continuing education" requirements upon licensed abstracters as a prerequisite to licensure, for the reason that such requirements are not in harmony with the provisions of K.S.A. 58-2801 et seq. and K.S.A. 1979 Supp. 74-3901 et seq. Cited herein: K.S.A. 58-2801, K.S.A. 1979 Supp. 58-2802, K.S.A. 58-2803, 58-2805, 58-2806, and K.S.A. 1979 Supp. 74-3901.

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Dear Mr. Hannah:

You request our opinion as to whether the Kansas Abstracters' Board of Examiners may adopt rules and regulations requiring "continuing education" in the field of abstracting "as a requisite to licensing."

In 1941, the Kansas Legislature created the Abstracters' Board of Examiners and provided for the licensure of abstracters. See L. 1941, Ch. 348. The 1941 Act, as amended in subsequent years, is now codified at K.S.A. 58-2801 et seq. and K.S.A. 1979 Supp. 74-3901 et seq. K.S.A. 1979 Supp. 74-3901 provides,

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in part, that the Board "may adopt such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the purposes of this act." Such rule-making power is, however, subject to the limitation that an administrative regulation may not go beyond what the legislature has authorized, or extend or enlarge a statutory provision. State, ex rel., Londerholm v. Columbia Pictures Corp., 197 Kan. 448, 454 (1966); Marcotte Realty & Auction, Inc., v. Schumacher, 225 Kan. 193, 197 (1979). An examination of the relevant statutory provisions is, therefore, required in order to determine whether a "continuing education" requirement would be in harmony with the statutory scheme.

K.S.A. 58-2801 provides, in part, that

"[e]very person, firm, partnership, association or corporation, who shall make, compile or complete and sell abstracts of title to real estate in the state of Kansas on and after September 1, 1941, shall first secure and hold a valid existing license issued in accordance with the provisions of this act."

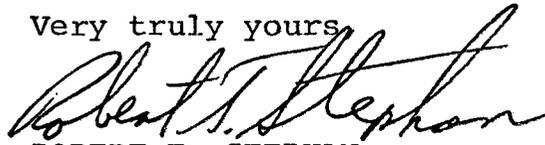
K.S.A. 1979 Supp. 58-2802 prescribes bond and insurance requirements for licensees, and also provides for the revocation of an abstracter's license (unless the abstracter is an attorney) in the event the licensee examines or furnishes, for hire, an opinion on an abstract of title or draws wills or other legal instruments not in connection with the licensee's business. K.S.A. 58-2803 is a "grandfather clause" applicable to abstracters engaged in abstracting upon the effective date of the Act, and provides that such abstracters shall be issued a license "upon the filing of bond as hereinbefore provided and the payment of the annual fee provided without further requirement or examination." (Emphasis added.) K.S.A. 58-2805 specifies that anyone who does not qualify under the grandfather clause may obtain a license "by complying with the provisions of this act and also by passing a satisfactory examination conducted by such abstracter's board of examiners." (Emphasis added.) K.S.A. 58-2806 enumerates the grounds upon which a license may be suspended or revoked.

Considering the above statutory scheme as a whole, it is clear that the adoption of a regulation imposing "continuing education" requirements upon abstracters would go beyond what the legislature has authorized. K.S.A. 58-2803 specifically states that no further requirement (other than the filing of a bond and payment of the annual fee) may be imposed upon licensees qualifying under the grandfather clause. K.S.A. 58-2805 provides that those not qualifying under the grandfather clause may be licensed by

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complying with the provisions of the act and by passing an examination conducted by the Board. There is no reference of any kind in the provisions of the act to "continuing education" requirements. Additionally, K.S.A. 58-2806 allows the Board to revoke or suspend a license only for violation of the act, malicious destruction of public records, and fraudulent practices. Therefore, the Board could not revoke or suspend the license of an abstracter for failure to comply with a regulation concerning "continuing education." In short, it is our opinion that the Board may not impose "continuing education" requirements upon licensees as a prerequisite to licensure, for the reason that such requirements are not in harmony with the above-cited statutory provisions.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm