



STATE OF KANSAS

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September 5, 1980

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ATTORNEY GENERAL OPINION NO. 80-189

Mr. J. Paul Flower  
Director  
Kansas Real Estate Commission  
535 Kansas Avenue, Room 1212  
Topeka, Kansas 66603

Re: Personal and Real Property--Real Estate Brokers  
and Salesmen--Continuing Education

Synopsis: Real estate brokers and salespersons who have been continuously and actively licensed in this state for a period of five or more years immediately prior to July 1, 1980, are not required to submit evidence of "continuing education" under the provisions of Section 13(g) of the Real Estate Brokers' and Salespersons' License Act [L. 1980, Ch. 164, §13(g)]. A real estate broker or salesperson need not have been continuously and actively engaged in the real estate business for the subject period of time in order to qualify for the exemption created by the aforesaid section. Cited herein: L. 1980, Ch. 164, 12(b) and 13(g).

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Dear Mr. Flower:

You request our opinion as to the construction to be given to the phrase "continuously and actively licensed" in Section 13(g) of 1980 Senate Bill No. 519 [L. 1980, Ch. 164, §13(g)]. Senate Bill No. 519 enacts the "Real Estate Brokers' and Salespersons' License Act," and Section 13(g) is a "grandfather clause"

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exempting certain licensees from compliance with the "continuing education" requirements imposed by the act. Section 13(g) provides as follows:

"No person who has been continuously and actively licensed as a real estate broker or salesperson in this state for a period of five (5) or more years immediately prior to July 1, 1980, shall be required to submit evidence of attendance of courses of instruction as provided by this section."  
(Emphasis added.)

The specific questions you pose, and our discussion and opinions relative thereto, are set forth below.

QUESTION: "1. What does 'actively licensed' mean?

- a. Licensed in good standing?
- b. Inactive - held in Commission Office?
- c. Active - engaged in the real estate business?
- d. Active - associated with a broker?"

The term "actively licensed" is not defined within the subject act. However, it appears that the term could only refer to the distinction, existing prior to enactment of Senate Bill No. 519, between "active" and "inactive" licenses. K.A.R. 86-1-1, a regulation adopted under the Kansas Real Estate Brokers' License Act (repealed by Senate Bill No. 519), defined an "inactive" license as one "which has been granted to an applicant but which is held in the office of the Kansas real estate commission." Examples of "inactive" licenses (which were to be held in the Commission office) included one of the licenses granted to a broker-salesman (see K.A.R. 86-1-6) and the license of a salesman who was not employed by or associated with a real estate broker [see K.S.A. 58-3002(b) and K.S.A. 58-3011]. Presumably, all licenses not held in the Commission office were classified as "active" licenses.

In our judgment, only those salespersons and brokers who have continuously held "active" licenses during the subject five-year period are within the exemption created by the grandfather clause. Additionally, 1980 Senate Bill No. 519 does not require those holding "active" licenses to have been actively engaged in the real estate business in order to qualify for the subject exemption.

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QUESTION: "2. Does this require 60 months of continuous and active licensure?"

In order to qualify for the exemption created by the "grandfather clause," a licensee must have been continuously and actively licensed (in this state) for the 60 months immediately prior to the month of July, 1980. Section 13(g) of the act cannot be construed as requiring continuous and active licensure for five calendar years prior to the year 1980.

QUESTION: "3. Does a licensee receive active and continuous time credit for the period they were, in fact, unlicensed but complied with the statutes by paying a late renewal penalty?"

The Kansas Real Estate Brokers' License Act, repealed by 1980 Senate Bill No. 519, provided as follows with regard to late payment of the annual fee:

"Failure to remit the annual fee when due will automatically cancel the license, except that any licensee failing to pay the annual renewal fee when due may have such license reinstated and renewed by the payment of the annual fee and an additional fee of fifty dollars (\$50), if such fees are remitted not later than June 30 of the year following the renewal date." L. 1979, ch. 176, §1. (Emphasis added.)

Section 12(b) of Senate Bill No. 519 contains a similar provision.

In our judgment, a licensee meets the requirement of "continuous and active" licensure for the preceding five years even though, on one or more occasions during said period of time, the licensee failed to pay the annual fee when due, but subsequently "reinstated" his or her license as allowed by the statute. The term "reinstated" means "to restore to a state from which one has been removed." 36A Words and Phrases, "Reinstated." A licensee is not restored to his or her former status if he or she is not held to be "continuously and actively licensed" for purposes of the "grandfather clause." In our judgment, the Legislature did not intend to penalize licensees who reinstated their licenses during the preceding five years by placing said licensees outside the grandfather clause.

QUESTION: "4. What would be the status of a salesperson who was terminated by one broker and has an inactive period prior to association with a new broker?"

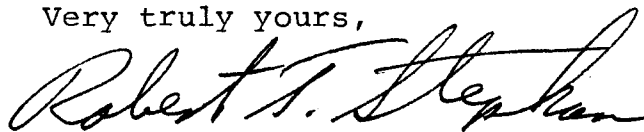
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We are advised that the licenses of such salespersons were to be held in the Commission office until the salesperson became associated with a new broker. Therefore, during such period of time, the license was "inactive" (see Question #1, above), and, in our opinion, there was a "break" in continuous, active licensure for purposes of construing the grandfather clause.

QUESTION: "5. Could the Commission waive the few days inactive time a new broker may have while the Commission Office mechanically 'sets up' a new company? This inactive time is not by the choice of the licensee; but is the result of a problem incurred in 'setting up' the licensee's new company."

The Commission may not "waive" the requirement of continuous, active licensure set forth in Section 13(g) of Senate Bill No. 519. However, as is stated in Question No. 1, above, a broker need not have been continuously and actively engaged in the real estate business in order to qualify for the exemption created by the "grandfather clause." Provided a broker continuously holds an "active" license, the fact that he is inactive (in the real estate business) during the period of active licensure is of no consequence in determining whether the requirements of the "grandfather clause" have been satisfied.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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RTS:BJS:TRH:jm