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July 12, 1983

ATTORNEY GENERAL OPINION NO. 83- 109

The Honorable Marvin Smith
State Representative
Fiftieth District
123 N.E. 82nd Street
Topeka, Kansas 66617

Re: Personal and Real Property--Real Estate Brokers and Salesmen--Deactivated License

Synopsis: The examination requirement imposed by subsection (c) of K.S.A. 1982 Supp. 58-3049, which requirement is a condition precedent to reinstatement of any real estate broker's or salesperson's license which has been deactivated for a continuous period of more than two years, is not, on its face, arbitrary, capricious or unreasonable. Cited herein: K.S.A. 1982 Supp. 58-3046a, 58-3049, U.S. Const., 14th Amend.

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Dear Representative Smith:

You request our opinion as to the constitutionality of subsection (c) of K.S.A. 1982 Supp. 58-3049. Specifically, you ask whether said section discriminates against real estate brokers and salespersons with "deactivated" licenses, in that it imposes an examination requirement as a precondition to the reinstatement of any license which has been deactivated for a continuous period of more than two years.

By enacting subsection (c) of K.S.A. 1982 Supp. 58-3049, the legislature has placed real estate brokers and salespersons

whose licenses have been deactivated for a continuous period of more than two years in a separate class for the purpose of imposing an examination requirement as a precondition to reinstatement. In determining the validity of said classification under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, the "reasonable basis" test must be applied. Said test has been described as follows by the Kansas Supreme Court:

> "Traditionally, the yardstick for measuring equal protection arguments has been the 'reasonable basis' test. The standard was set forth in McGowan v. Maryland, 366 U.S. 420, 425-26, 6 L.Ed.2d 393, 81 S.Ct. 1101:
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> "'. . . The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. . . .'
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> "In Dandridge v. Williams, 397 U.S. 471, 25 L.Ed.2d 491, 90 S.Ct. 1153, reh. denied 398 U.S. 914, 26 L.Ed.2d 80, 90 S.Ct. 1684, it was stated:
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> "'If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. . . .' (p. 485.)" State ex rel. Schneider v. Liggett, 223 Kan. 610, 616 (1978).

The Court has further described said test as follows:

> "Establishment of classifications with mathematic precision is not required. In a dissenting opinion in Louisville Gas Co. v. Coleman, 277 U.S. 32, 41, 72 L.Ed. 770, 48 S.Ct. 423, Mr. Justice Holmes stated:

> "'. . . [W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.'" Id. at 619.

Applying the aforesaid principles to determine the validity of subsection (c) of K.S.A. 1982 Supp. 58-3049, we are unable to state, as a matter of law, that the classification created by said statutory provision lacks a reasonable basis or is arbitrary. Although the legislature could have prescribed a different requirement for reinstatement of deactivated licenses, such as yearly completion of continuing education requirements prescribed by K.S.A. 1982 Supp. 58-3046a, it has not chosen to do so. Even if could be argued that a requirement other than re-examination would have been more appropriate, or that re-examination should not be required until a license has been deactivated for a period longer than two years (questions upon which we express no opinion), such arguments, if true, would not necessarily mean that the statutory requirement is invalid. "To be able to find fault with a law is not to demonstrate its invalidity." Manzanares v. Bell, 214 Kan. 589, 612 (1974).

In summary, it is our opinion that the examination requirement imposed by subsection (c) of K.S.A. 1982 Supp. 58-3049, which requirement is a condition precedent to the reinstatement of any real estate broker's or salesperson's license which has been deactivated for a continuous period of more than two years, is not, on its face, arbitrary, capricious or unreasonable.

Very truly yours,

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RTS:BJS:TRH:jm