

The State of South Carolina

LIB.
2850



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August 11, 1986

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Real Estate Commission
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RE: Licensure of Appraisers Working as Employees of
the Lending Institutions or Government Agencies
Opinion Request #2350
AG File No. 86-01580

Dear Mark:

As you mention in your opinion request, Act No. 353 (1986) amends the definition of real estate "broker" to include one "who acts as an appraiser". §40-57-10(1), Code of Laws of South Carolina (as amended). The change also adds "appraiser" to the list of activities which constitute a misdemeanor when performed without a license from the Commission. §40-57-20, Code (as amended). The recent changes did not, however, affect the exemptions which are found at §40-57-40, Code. This section of the Code had already stated that the provisions of the Chapter apply to persons who hold themselves out to the public as appraisers. Thus, it is logical to assume that the addition of appraisers in the sections mentioned above was simply a clarification of an existing requirement of licensure.

The question then becomes, what is the meaning of the exemptions in §40-57-40 Code? As agencies and instrumentalities of the State or Federal government can only operate through their officers and employees, it is reasonable to assume that any employee of these agencies is exempt while engaged in their proper governmental functions. The exemption for employees of "lenders" is expressly set out in the Code. The questions then become what is an employee, what is an agency or instrumentality of the government, and what is a lender?

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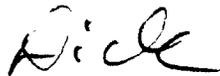
As your opinion request pre-supposes that the individual is an "employee" of a "lending institution" or a "federal agency or a federally chartered lending institution", it seems that by definition the exemption applies. There does not appear to be any exemption however for an independent appraiser or one who works on a contract or fee basis, as opposed to one who works on a salaried basis. This is without regard to whether the individual is doing the work for the government or a lender as they are not employees and therefore are not a part of the entity itself.

This result is further supported by the deletion of the exemption for "anyone making appraisals through such employees for lending or governmental purposes". Cf. §40-57-40 (1986) with Act 353 (1986). The deletion of this language, which was confusing at best, cannot in any way be construed to do anything but narrow the exemption, if it in fact does anything.

There is no distinction which I can see between persons from Georgia working in South Carolina and those who reside in South Carolina as far as exemptions are concerned. Licensees are required by §40-57-90, Code (1986) to be residents of the State as you no doubt know.

I hope you will find this analysis to be of some help.

With best regards,



C. Richard Kelly
Assistant Attorney General

CRK/mgm

REVIEWED AND APPROVED BY:



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