

1981 WL 158221 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 3, 1981

*1 Kenneth F. Smith, Esquire
Buist, Moore, Smythe & McGee
Post Office Box 999
Charleston, South Carolina 29402

Dear Mr. Smith:

You have requested an opinion as to whether a person engaged in, inter alia, the sale, lease and management of real estate may incorporate through means other than the professional association statute, § 33-51-30, 1976 Code of Laws of South Carolina. That statute provides in part that 'Any one or more persons duly licensed to practice a profession and render professional services under the laws of this State may form a professional corporation, as distinguished from a partnership and a corporation' (emphasis added)

Among the categories found in Title 40 of the Code 'professions and occupations' are real estate brokers. Sections 40-57-10 et seq.

Although it might be argued that the professional association statute was intended to limit persons in professions to forming professional associations rather than corporations, this need not be reached. Title 40, in listing both professions and occupations, clearly intends a distinction. The question is thus whether engaging in various aspects of the real estate business constitutes a profession or merely an occupation. It is the opinion of this Office that it constitutes the latter.

The South Carolina Supreme Court has stated that 'the difference between a business and a profession is essentially that while the chief end of a trade or business is personal gain, the chief end of a profession is public service.' [In re Jacobsen](#), 126 S.E.2d 346, 353 (1962). A number of other cases cited in Words and Phrases under 'profession' indicate that a distinction between a profession and a commercial enterprise, while including the degree of public service present, also includes a rather high degree of intellectual and educational attainment in a profession. South is not necessary in the real estate business. Finally, in [Pennock v. Fuller](#), 41 Mich. 153, 2 N.W. 176, 177, the Court said that 'Real estate agencies are no more professions than any other business agencies.'

It would thus appear that there is little basis for deeming the business of real estate a profession and that real estate brokers and managers may incorporate under the ordinary corporation laws of this State. See, also, [Ezell v. Ritholz](#), 188 S.C. 39, 198 S.E. 419 (1938), which also distinguishes professional and commercial activity.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

1981 WL 158221 (S.C.A.G.)