



ALAN WILSON
ATTORNEY GENERAL

June 10, 2013

The Honorable James E. Smith, Jr.
Member, House of Representatives
P. O. Box 50333
Columbia, SC 29250-0333

Dear Representative Smith:

This Office received your request for an opinion regarding whether or not a real estate agent who is no longer licensed is entitled to a real estate commission. Our understanding of the facts is that the real estate agent was involved in the negotiation of terms of a real estate Contract of Sale. The contract specified that the agent was due a real estate commission. The agent relinquished his license on or about April 13, 2013, which was during the negotiation of the terms of the contract. The contract was signed on or about April 25, 2013.

LAW/ANALYSIS:

The South Carolina Code has the following definitions:

- (3) 'Broker' means an individual who for a fee, salary, commission, or other valuable consideration or who with the intent or expectation of receiving compensation:
- (a) negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements thereon;
 - (b) Auctions or offers to auction real estate;
 - (c) Solicits a referral in order to conduct activities set forth in this section;
 - (d) Offers advisory services as a real estate consultant or counselor;
 - (e) Offers to act as an agent representing a principal in a real estate transaction;
 - (f) Advertises or otherwise holds himself out to the public as being engaged in any of the foregoing activities...
- (15) 'Salesman' means a licensee associated with a broker-in-charge who, for compensation, engages in or participates in an activity included in item (3).

S.C. Code Ann. Section 40-57-30 (1976 Code, as amended).

The real estate agent in question was involved in the negotiation of a sale of real estate for a commission. Therefore, it appears that this real estate “agent” is a “broker” or “salesman” under South Carolina law.

South Carolina law requires that a broker or salesman be licensed. Pursuant to S.C. Code Ann. Section 40-57-20 (1976 Code, as amended), “It is unlawful for an individual to act as a real estate broker, real estate salesman, or real estate property manager or to advertise as such without a valid license issued by the department.” Under S.C. Code Ann. Section 40-57-30 (1976 Code, as amended), the department is defined as the Department of Labor, Licensing and Regulation. We have previously noted that the South Carolina statutes banning an unlicensed broker from obtaining a fee are “quite comprehensive in its terms and is intended to have a prophylactic effect by including in its requirements all manner of real estate sales carried out with a view toward receiving some manner of compensation.” See *Op. S.C. Atty. Gen.*, December 3, 1997 (1997 WL 811908), quoting *Op. S.C. Atty. Gen.*, No. 77 – 349, November 3, 1977 (1977 WL 24688).

South Carolina law also makes it a crime for a broker or salesman not to have a license. S.C. Code Ann. Section 40-57-220 (1976 Code, as amended) states the following:

(A) It is unlawful for a person to act as a real estate broker, real estate salesman, or property manager or to advertise or assume to act as such without first having obtained a license issued by the Real Estate Commission.¹ A person violating this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(B) A real estate broker, salesman, or property manager who fails to renew or register his license annually and continues to engage in such business is guilty of a misdemeanor and upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

The statute states that it is a crime when a broker or salesman fails to renew or register his license annually and continues to engage in the business of a broker or salesman for a fee, salary, commission, or other valuable consideration or for the intent or expectation of receiving compensation. Therefore, it is illegal for the real estate broker or salesman at hand to receive a commission.

“Quantum meruit” is defined by Black’s Law Dictionary as the following: “1. The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship. 2. A claim or right of action for the reasonable value of services rendered. 3. At common law, a count in an assumpsit action to recover payment for services

¹ The Real Estate Commission is under the Department of Labor, Licensing and Regulation, pursuant to S.C. Code Ann. Section 40-57-10, which explains that “[t]he purpose of this commission [Real Estate Commission] is to regulate the real estate industry so as to protect the public’s interest when involved in real estate transactions.”

rendered to another person. Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach-of-contract case so that the plaintiff can recover even if the contract is unenforceable.”

Quantum meruit is a consideration in this case because the broker or salesman could potentially claim compensation for the work he performed prior to his relinquishment of his license under this theory. It is the opinion of this Office that the broker/salesman would not succeed under the equitable remedy of quantum meruit because it would be an illegal act for him pursuant to the statute cited above to receive a commission after the relinquishment of his license. As noted above, we have long recognized the purpose of the statute requiring a broker to be licensed in order to receive a fee and an award of quantum meruit to an unlicensed broker would defeat such a policy.

The broker or salesman could potentially receive a commission if the sale was the sale of a business which included real estate. In Roberts v. Gaskins, 327 S.C. 478, 486 S.E.2d 771 (Ct. App. 1997), the Court concluded “that a business broker unlicensed as a real estate broker may enforce a commission contractually earned on the sale of the personal property of the business, irrespective of the form of sale, even though the sale may include real estate; provided, of course, no commission can be based either directly or indirectly on the value of the real property involved.” See Op. S.C. Atty. Gen., December 3, 1997, supra for a more detailed analysis of this case. However, your facts seem to indicate that your broker or salesman was involved in a pure real estate transaction.

CONCLUSION

In conclusion, the real estate agent in your fact pattern is a broker or salesman under South Carolina law and is required to be licensed. Because it is a crime for a broker or salesman to conduct business for compensation without a license, payment to the real estate agent of a commission would be unauthorized and inconsistent with the policy of South Carolina law.

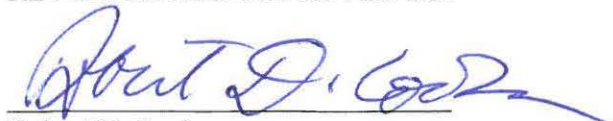
Please be aware that this opinion is based on the facts stated above. Until a court or the legislature specifically addresses the issues in your letter, this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General