

The State of South Carolina



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April 22, 1994

The Honorable Norma S. Andrews
Clarendon County Auditor
Post Office Box 697
Manning, South Carolina 29102

Dear Ms. Andrews:

Your letter to the Director of the Property Tax Division of the Department of Revenue and Taxation, concerning the need for licensure or certification of ad valorem tax appraisers, has been referred to the Office of the Attorney General for response. Referencing statutes such as S.C. Code Ann. §§ 40-60-30 and 12-4-335, a question has been raised as to whether licensure or certification requirements for ad valorem tax appraisers may have been removed by § 40-60-45 as adopted in 1993.

It is our understanding that counsel for the South Carolina Department of Labor, Licensing and Regulation, in accordance with the policy adopted by this Office for agencies with in-house counsel, has advised one of the agencies within that Department that § 40-60-45 that if the appraisal is not to be used in a federally related transaction, then the appraiser is not required to be permitted, registered, licensed, or certified. Thus, appraisals made for ad valorem tax purposes would fall outside the purview of the current appraisal statute. We further understand that various public officials (i.e., auditors and assessors) and entities affected by the relevant statutes may not agree with this interpretation of § 40-60-45. To resolve these conflicting interpretations, then, the opinion of this Office has been requested.

Chapter 60 of Title 40, S.C. Code Ann., governs the real estate appraisers professions and occupations. Specifically, § 40-60-30(A) provides: "Except as provided in Section 40-60-40, it is unlawful for a person to engage in real estate appraisal activity in this State without first obtaining a permit, registration, license, or certification as

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provided in this chapter." The exceptions in § 40-60-40 are not relevant herein. An exemption is then provided in § 40-60-45:

A real estate appraiser registered, licensed, or certified pursuant to this chapter is not required for real-estate related financial transactions exempt from the appraisal requirement under the regulations of federal banking agencies.

In the interpretation of a statute such as § 40-60-45, it is helpful to review a few cardinal rules of statutory construction. In interpreting any statute, the primary objective of both the courts and this Office is to determine and effectuate the legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the terms of a statute are clear and unambiguous, those terms must be applied literally. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977). The title of an act may be considered in aid of construction to show legislative intent. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966).

Applying these rules of statutory construction to § 40-60-45, it is our opinion that if the regulations of federal banking agencies exempt real-estate related financial transactions from the appraisal requirement, then a real estate appraiser registered, licensed, or certified pursuant to Chapter 60 of Title 40 is not required to handle that transaction. If the appraisal is not to be used in accordance with § 40-60-45 (or the exceptions as specified in § 40-60-40), then § 40-60-30 would require that an appraiser be permitted, registered, licensed, or certified, as may be appropriate.

Such an interpretation would be in accordance with the title of Act No. 17 of 1993, which added § 40-60-45 to the Code of Laws. The title provides in relevant part:

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-60-45 SO AS TO PROVIDE THAT A STATE LICENSED OR STATE CERTIFIED REAL ESTATE APPRAISER IS NOT REQUIRED FOR REAL ESTATE-RELATED FINANCIAL TRANSACTIONS WHICH ARE EXEMPTED FROM THE APPRAISAL REQUIREMENT UNDER THE REGULATIONS OF THE FEDERAL BANKING AGENCIES;

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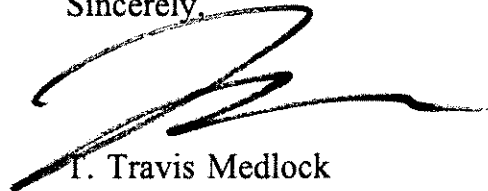
Because none of the stated exceptions or exemptions appear to apply to ad valorem tax appraisers, it is the opinion of this Office that such appraisers would be required to be registered, licensed, permitted, or certified, as may be appropriate. Section 40-60-45 did not remove such requirement for ad valorem tax appraisers or, indeed, anyone other than one handling real estate related financial transactions exempted from the appraisal requirement under regulations of the federal banking agencies.

CONCLUSION

The appraisal of real property for tax purposes carries with it a high standard of responsibility. Taxpayers are watching closely and want to know that the person appraising their property has the know-how to do the job. Along with high professional standards, goes the credibility of the tax appraisal process. That is one reason the Legislature imposed the requirement of licensure upon those given that trust. It is our opinion that this requirement is still there.

With kindest regards, I am

Sincerely,



T. Travis Medlock
Attorney General

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