

The State of South Carolina



Office of the Attorney General

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The Honorable Barbara Stock Nielsen, Ed.D.
State Superintendent of Education
S.C. Department of Education, Room 1006
Rutledge Building - 1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Nielsen:

You have requested the Opinion of this Office confirming that proprietary schools of real estate are no longer subject to licensure by the State Board of Education (Board) under the terms of Act No. 12, 1991 S.C. Acts 16. S.C. Code Ann. § 40-57-100 (Supp. 1990), as amended by Act 12, contains certain instructional requirements related to licensing by the South Carolina Real Estate Commission (Commission). Section 40-57-115, as added by Act 12, now provides in part as follows:

Section 40-57-115(a):

The commission, through its regulations and guidelines, shall establish standards relative to the establishment and conducting of all education courses required by this chapter and the review, approval, or regulation of schools, organizations, associations, institutions, or instructors offering these courses, including, but not limited to, ...private business entities and organizations; the establishment, approval, and review of curriculum instructors; hours of attendance; classroom facilities; enrollment and cancellation policies; tests; examinations;

certificates of completion; and other operating procedures....

(C) The commissioner may deny, reprimand, fine, suspend, or revoke the approval of an instructor or school...if, after a hearing, the commissioner finds that the applicant, instructor or educational provider has violated or failed to satisfy the provisions of this chapter or the regulations and guidelines established under this chapter.

Your question is whether proprietary schools of real estate now fall under the terms of section 59-59-20(2)(h) which provides, in part, as follows:

(2) The definition of a proprietary school shall not include the following:...

(h) A school which is regulated and licensed under an occupational licensing act of the State.


Previous Opinions of this Office written prior to section 40-57-115 had concluded that the Board had the legal authority to license and regulate real estate schools, assuming that the schools qualified as proprietary schools under the definition in section 59-59-20(1). Ops. Atty. Gen. No. 78-134 (July 12, 1978); Ops. Atty. Gen. January 15, 1990 and April 7, 1987. Although the Commission had been found to have the authority to "approve" of such institutions, it was not determined to have the authority to undertake regulation of the advertising practices of such institutions. Ops. Atty. Gen. January 15, 1990 and April 7, 1987.

When section 40-57-115 is given its plain meaning (S.C. Dept. of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986)), the Commission now has the authority to regulate and approve real estate schools. This new authority of the Commission appears to fall under the exception of section 59-59-20(h) which applies to schools "...regulated and licensed under

an occupational licensing act of the State." Although section 40-57-115 does not use the word "license", it used the word "approval" which is part of the definition of "license" in the Administrative Procedures Act. Section 1-23-310(3) (1986)). ^{1/} In addition, section 40-57-115(A) expressly uses the word "regulate" which is included in the section 59-59-20(h) exception. Construing all of these provisions together (Sutherland Statutory Construction, Vol. 2A § 51.02; Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970)) indicates that schools coming within the scope of section 40-57-115(A) now fall under the exception of section 59-59-20(h) so as not to be a part of the definition of proprietary schools under that statute. Therefore, the previous Opinions of this Office to the contrary are modified because of this subsequent change in the law. Ops. Atty. Gen. October 3, 1986.

In conclusion, real estate schools falling under the terms of section 40-57-115(A) as added by Act 12, 1991, come within the exemption of the definition of proprietary schools set forth at section 59-59-20(h) and are, therefore, no longer subject to licensure by the State Board of Education. This Opinion interprets Act 12 only in relation to the proprietary school laws. Section 59-59-10, et seq. If you need additional information, please let me know.

Yours very truly,


J. Emery Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:


JOSEPH D. SHINE
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^{1/} "...[T]he whole or part of any agency...approval...or similar form of permission required by law...." Section 1-23-310.