

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3660

September 19, 1989

The Honorable Henry L. Jolly  
Commissioner  
S. C. Real Estate Commission  
Capitol Center, AT&T Building  
1201 Main Street, Suite 1500  
Columbia, South Carolina 29201

Dear Commissioner Jolly:

As you are aware, your letter to Attorney General Medlock of August 10, 1989 was referred to me for response. By that letter, you requested this Office's opinion on whether the S. C. Real Estate Commission (Commission) has the authority to enter into an Affirmative Fair Housing Agreement (Agreement) with the United States Department of Housing and Urban Development.

You enclosed with your letter a copy of a memorandum prepared by the Commission's General Counsel. That memorandum discusses the general law regarding the powers of an administrative agency as well as an Opinion, dated November 22, 1978, in which this Office concluded that the Commission did not have the requisite statutory authority to enter into the aforementioned agreement.

Although both the memorandum and the prior opinion discuss other issues related to the Commission's ability to enter into the agreement, the clearly dispositive question is whether the Legislature has vested in the Commission the power to do so. For, it is well settled that administrative agencies have no common-law powers, but only such as have been conferred upon them by law, expressly or by implication. 1 Am Jur 2d, Administrative Law, Section 70,

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p. 866. City of Columbia v. Board of Health and Environmental Control, 292 S.C. 535, 355 S.E.2d 536 (1987).

In the matter at hand, the Legislature has expressly empowered the Commission to:

- (a) establish the policy,
  - (b) issue general rules and regulations, and
  - (c) advise the Real Estate Commissioner in carrying out the provisions of this chapter.
- (See: 1976 S. C. Code, Section 40-57-50).

In addition, the language contained in the title of the Commission's enabling act indicates that one of the purposes for which the Commission was created is to "safeguard the public interest in real estate transactions".<sup>1</sup> While this language is not conclusive as to the parameters of the authority granted to the Commission by the statutes, it is nonetheless valuable as an indication of legislative intent. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374, (1972). In any event, it is evident that the Legislature intended that the Commission exercise the authority granted to it in such a manner as would safeguard the public interest in real estate transactions.

Among other things, the Agreement has as its purposes:

"the dual objectives of ensuring that opportunities in the real estate field are equally available to all, regardless of minority status, and ensuring that persons in the real estate business are informed and held to their responsibilities under the fair housing laws."

In pertinent part, the Agreement would require the Commission to: (1) include information of fair housing principles and practices in education programs in which licensees and candidates for a license participate; (2) include questions on fair housing principles and practices in licensing examinations; (3) include federal, state and local fair housing law in manuals containing licensing statutes and/or regulations; (4) make available to licensees literature explaining the rights and remedies afforded to consumers by fair housing law; (5) assist women and minority group members in entering the real estate business; (6) preclude cultural, racial and ethnic bias in its screening of license applicants; (7) affirmatively seek

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female and minority representation within its staff;  
(8) maintain liason with state and local human rights agencies for the purpose of obtaining information regarding the involvement of licensees in fair housing law violations; and (9) enforce licensee compliance with fair housing laws by taking<sup>2</sup> action consistent with its disciplinary authority.<sup>2</sup>

Clearly, the purposes of the Agreement, and the responsibilities of the Commission thereunder, are consistent with the Commission's stated purpose of safeguarding the public interest. Moreover, entry into the Agreement by the Commission may reasonably be seen as that body executing its function of establishing the policy of the agency with respect to discriminatory practices in the field of real estate.<sup>5</sup>

In an opinion which pre-dated the present Section 40-57-150, CODE,<sup>4</sup> this Office opined that the Commission had the power to expend funds for the support of a University of South Carolina research project on the basis that the project was "closely enough related to the purpose of the Commission to warrant expenditure of the funds." Opinion of the Attorney General, No. 4111, September 9, 1975. Similarly, in the matter at hand, the purposes and requirements of the Agreement bear a close relation to the Commission's purpose and to its express statutory authority to establish the policy of the agency. Therefore, it may be concluded that the Commission has the authority to enter into the Agreement. Such a conclusion would receive support from the opinion of the S. C. Supreme Court in City of Columbia, supra. In determining the power of the Department of Health and Environmental Control to police a sewer project undertaken by the City of Columbia, the Court stated that "the delegation of authority to an administrative agency is construed liberally when the agency is concerned with the protection of the health and welfare of the public."

Additionally, the Commission is expressly empowered to advise its appointed Commissioner in carrying out the provisions of Section 40-57-10, et seq., CODE. One of the Commissioner's functions is to discipline licensees who engage in certain specified misconduct.<sup>5</sup> Discriminatory real estate practices may be interpreted by the Commissioner as a type of misconduct that is prohibited by relevant

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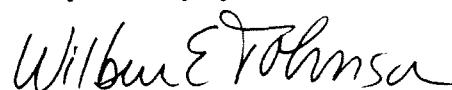
statutes. (See, for example: In the Matter of Herbert Schimkus, et al. v. Gail S. Shaffer, as Secretary of State, 143 A.D.2d 418, 532 N.Y.S.2d 564, (1988); William E. Ranguist v. Ronald E. Stather, as Director of the Department of Registration and Education of the State of Illinois, 55 Ill. App.3d 545, 370 N.E.2d 1198, (1977)). Thus, the authority of the Commission to enter into an agreement for the purpose of vitiating discriminatory real estate practices may be reasonably inferred from the Commission's express authority to advise the Commissioner with respect to his disciplinary functions, including the investigation of discriminatory real estate practices.

Finally, it is somewhat instructive to note the recent enactment by the Legislature of a Fair Housing Law.<sup>6</sup> Section 31-21-100(4) of that law permits the S. C. Human Affairs Commission to "cooperate...with public or private agencies...within the State which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices." By that language, the Legislature seems to explicitly recognize that public agencies other than the Human Affairs Commission may be involved in activities related to discriminatory housing practices. The policies of the Real Estate Commission, as would be expressed by its entry into the Agreement, and by the execution of its responsibilities thereunder, would appear to come within the scope of activities contemplated by the Legislature.

It was noted at the outset of this discussion that this Office has previously opined that the Commission's statutes gave it no authority to enter into the Agreement. However, on the basis of a fresh reading of the Commission's statutes in the light of City of Columbia, supra, and the additional authorities cited herein, it must be concluded that statutes governing the activities of the Commission may be construed so as to empower it to enter into the Affirmative Fair Housing Agreement with the United States Department of Housing and Urban Development.

I trust that you will find the foregoing information to be responsive to your inquiry. Please contact me if I can be of any further assistance.

Very truly yours,



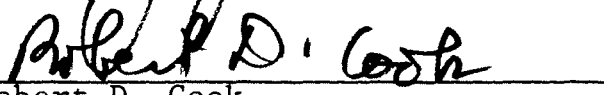
Wilbur E. Johnson  
Assistant Attorney General

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REVIEWED AND APPROVED BY

  
\_\_\_\_\_  
Donald J. Zelenka  
Chief Deputy Attorney General

  
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Robert D. Cook  
Executive Assistant for Opinions

(1) See: Act No. 833, 1956 S. C. Acts and Joint Resolutions, p. 2046.

(2) The Agreement also contains a provision which expressly excuses the Commission from complying with any requirement thereof for which the Commission lacks authority or funding or which would be prohibited by state or other law. Consequently, the Commission would be required by the Agreement to take only such action as it is already lawfully empowered to take.

(3) Significantly, the preamble to the Agreement recites, in part, that "real estate license law officials, being responsible for regulating the practices of individuals and organizations engaged as real estate agents within their respective jurisdictions, are in an advantageous position to promote the national fair housing policy." (emphasis supplied).

(4) The present Section 40-57-150, CODE, provides, in relevant part, that:

"The Real Estate Commission may allocate a sum of up to five dollars from each real estate broker's, salesman's, and property manager's annual renewal fee to the S. C. Real Estate Commission Education and Research Fund to be used: (1) to carry out the advancement of education and research for the benefit of those licensed under the provisions of this chapter and for the improvement and increased efficiency of the real estate industry in this State; (2) to provide for the analysis and evaluation of factors which affect the real estate industry in South Carolina; and, (3) to provide for the dissemination of the results of the research."

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The corresponding statutory provision in effect at the issuance of the 1975 Opinion contained no such language empowering the Commission to expend monies for research.

(5) See: Section 40-57-170, CODE.

(6) See: Act No. 72, 1989 Acts and Joint Resolutions, Advance Sheet No. 2, p. 141.