The State of South Carolina

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The Honorable Alex Harvin, III
The Majority Leader Emeritus
House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Harvin:

A copy of your letter of December 17, 1987 to the Attorney General has been referred to me for review and response. One of the questions which you asked in that letter is whether counties or cities may impose on realtors operating within their boundaries, requirements, in the form of licenses, fees or qualifications to practice, beyond those that are mandated by the general law.

Although your question is somewhat unclear, for purposes of this discussion, I am assuming that you are asking whether counties or cities may impose on real estate brokers etc. qualifications, fees or other licensing requirements beyond those set forth in the general law, 1976 S. C. Code, 40-57-10, et seq., as amended.

Any discussion of this issue must begin with an acknowledgement of well-recognized legal principles which hold that:

> "The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal ordinance are

> not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict unless the statute limits the requirement for all cases to its own prescription." 56 Am.Jur.2d, Municipal Corporations, Etc. Section 374, pp. 408-409.

South Carolina courts have followed this general principle of law. In Amvets Post 100 v. The Richland County Council, et al., 280 S.C. 317, 313 S.E.2d 293 (1984), the South Carolina Supreme Court upheld the validity of a county bingo ordinance. In its analysis of the issue, the Court first determined whether the state, by its general law, had pre-empted the regulation of bingo. Finding no pre-emption, the Court next examined the county ordinance for provisions which conflict with the general law. Quoting from McAbee v. Southern Railway Co., 166 S.C. 166, 164 S.E. 444, (1932), the Court stated:

> "In order that there be a conflict between a state enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them...." McAbee, supra, at page 445.

From the foregoing, it is clear that the South Carolina courts have adopted a three-step analysis in reviewing local ordinances vis-a-vis general statutes. First, the court determines whether the state has pre-empted local regulation by "limiting the requirements for all cases to its own prescription." City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242, (1963). If no pre-emption is found, the court then determines whether provisions of the local ordinance conflict, in any way, with the general law. Local regulations which conflict with the general law will not be allowed to stand. Amvets, supra. The third step, which is not relevant to this discussion, is whether the

provisions of the local ordinance are, in any way, unreasonable or discriminatory.

I note here that your question does not present for review an actual local ordinance governing the licensing of real estate brokers, etc. Therefore, quite obviously, it cannot be determined whether the provisions of any such ordinance would be in conflict with any of the provisions of Section 40-57-10, et seq. However, such a determination may not be necessary in view of the fact that it appears that a local ordinance purporting to regulate the licensing of real estate brokers, etc. would fail the first step of the three-step analysis set forth in Amvets. In other words, it appears that the state has "limited the licensing of real estate brokers, etc. to its own prescription", thus pre-empting such regulation by counties or municipalities. The provisions of Section 40-57-10, et seq. set forth, in mandatory terms, the licensing requirements for real estate brokers, etc.[1] The requirements are clear, detailed and comprehensive.[2] Unlike the general law examined in Amvets, Chapter 57 contains no language indicative of legislative recognition of concurrent regulation by counties or municipalities. Indeed, given the specificity of the requirements, it is difficult to believe that the Legislature contemplated a local ordinance which, for example, might require an educational level beyond that set forth in 40-57-100.

For these reasons, it is the opinion of this Office that the Legislature, by its enactment of Chapter 57, has probably pre-empted local attempts to regulate the licensing

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[1]Instructive on this point is the case of Garden State Farms Inc. v. Bay, 77 N.J. 439, 390 A.2d 1177, (1978), wherein the Court stated: "Legislative intent to pre-empt a field will be found either where the state scheme is so pervasive or comprehensive that it effectively precludes the coexistence of municipal regulation...."

[2]The pertinent portion of Section 12-21-2590 states that: "No license may be issued unless the person or organization is in compliance with all county or municipal ordinances in regard to bingo."

requirements of real estate brokers, etc.[3] Therefore, local ordinances which purport to do so, are, most likely, invalid.

I trust that you will find this discussion to be responsive to your inquiry. Please contact me if I can be of further assistance.

Very truly yours,

Wilbur E. Johnson

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[3]One should note that this opinion is applicable to local ordinances purporting to regulate licensing requirements. Local regulation of other matters involving real estate brokers, etc. may be permissible. Of course, it would be necessary to examine the local ordinance to determine whether any of its provisions conflict with the general law. Of interest on this issue is Arquilla-DeHaan Realtors v. Village of Park Forest, 44 Ill. Dec. 853, 411 N.E.2d 1219, (1980), where the Court found that the State Real Estate Brokers and Salesmen Licensing Act had not pre-empted local regulation of real estate brokers and salesmen with respect to fair housing.

REVIEWED AND APPROVED BY:

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