

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

January 7, 1988

SUBJECT: Taxation & Revenue - Municipal License Tax -
Nonresident Realtors.

SYLLABUS: Whether a nonresident realtor is subject to a municipal license tax is dependent upon the activities of the realtor within the municipality. If the same is the showing, listing, advertising or other solicitation of buyers, there is in most probability a sufficient activity to constitute doing business.

TO: Honorable Alex Harvin III
The Majority Leader Emeritus
South Carolina House of Representatives

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Can a city or county impose a business license fee upon a realtor who does not have an office located in the city or county but travels there for the purpose of selling a piece of property that is listed with the realtor?

APPLICABLE LAW: Section 5-7-30, Code of Laws of South Carolina, 1976.

DISCUSSION:

The General Assembly has conferred authority to a municipality by Section 5-7-30 to "levy a business license tax on gross income."¹ The only limitation is that a wholesaler must maintain within the corporate limits of the municipality a mercantile establishment for the distribution of wholesale goods or a warehouse. The limitation, however, is not here applicable.

¹The business license is a revenue-producing measure and is thus under the municipality's taxing authority rather than its police powers. See McQuillin, Municipal Corporations, Vol. 9, Licenses, Section 26.15.

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The general rule is stated in McQuillin, Municipal Corporations, Section 26.48, p. 130 as follows:

"The prevailing rule that ordinances of a general nature are binding upon all persons within the corporate area, whether residents or not, and upon all property within the municipal boundaries whether owned by inhabitants or strangers, applies to licensing ordinances. That is to say, license requirements and taxes imposed upon all engaging in certain businesses, occupations or activities within the municipality may be made and generally are binding on residents and nonresidents alike."

Whether the realtor is subject to the licensing ordinance is dependent upon the realtor's activities within the municipality. It is a factual question of whether such constitutes doing business within the municipality.

In example, if the nonresident realtor advertises the property from his nonresident office and has no activity within the municipality, then such would not constitute doing business. Should the realtor, however, actively participate in the showing, listing, advertising or other solicitation of buyers within the municipality, then under such circumstances, the realtor would most probably be doing business within the municipality and subject to its license fees. In Pee Dee Chair Co. v. City of Camden, 165 S.C. 86, 162 S.E. 771, the court held that:

"It is not always an easy matter to give a satisfactory definition of 'business' or 'occupation,' as used in a statute or ordinance like the one before us, but the terms ordinarily carry with them some idea of custom or continuity as opposed to an isolated or sporadic act."

It is thus apparent that it is the total activity of the realtor that must be reviewed to determine whether the activity constitutes doing business within the intent and

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meaning of the municipal ordinance.²

CONCLUSION:

Whether a nonresident realtor is subject to a municipal license tax is dependent upon the activities of the realtor within the municipality. If the same is the showing, listing, advertising or other solicitation of buyers, there is in most probability a sufficient activity to constitute doing business.

²It is suggested that the realtor review the matter with the municipal office charged with the duty of issuing the license. The sale of a single property could be isolated or constitute an extensive business activity within the city.

JLAJR/jws