

1977 WL 37232 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1977

\*1 Hon. Earl M. Middleton  
State House  
Columbia, SC 29201

Dear Rep. Middleton:

You have requested an opinion of this office as to the validity under §§ 40-46 et seq. (the South Carolina Right to Work Law) of Article X of the Bylaws of the South Carolina Association of Realtors. Article X provides that the annual dues of a REALTOR member of the Association shall be the sum total of the dues of the local Board (\$15), the State Association (\$25), and the National Association (\$35) plus an amount equal to \$12 times the number of sales employees and independent contractors affiliated with such firm, partnership, or corporation who are not Active or Associate (i.e. dues paying) members of the S. C. Association of Realtors. Thus, Article X requires all REALTORS/EMPLOYERS who are members of the Association to pay dues based upon the number of its employees who are not members of the Associations.

While Article X is technically somewhat different from a typical situation in which mandatory union dues are extracted from nonunion employees, the legal nature of Article X is probably the same. § 40-46.2(3) provides:

It shall be unlawful for any employer:

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3) To require any employee as a condition of employment, or of continuance of employment, to pay any fees, dues, assessments or other charges or sums of money whatsoever to any person or organization.

In practical effect, Article X would require a REALTOR employer to extract the payments in question from his employees or pay them himself. The latter option would not appear to change the basic character of Article X, which is to require a per capita payment for each employee, whether a member of the organization or not. It is therefore quite possible that Article X effectively imposes a requirement on certain employers which is illegal. However, a number of arguments could also be made to the contrary, and the only certain resolution of this issue would be through a court adjudication.

Please let me know if I can be of any further help.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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