

1978 S.C. Op. Atty. Gen. 73 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-46, 1978 WL 22528

Office of the Attorney General

State of South Carolina

Opinion No. 78-46

March 8, 1978

**\*1 SUBJECT: Real Estate Agents, Brokers, Dealers and Salesmen**

The South Carolina Real Estate Commission presently has no authority to categorically prohibit brokers from offering inducements to prospective purchasers or vendors of real estate. The subject could be treated by Commission Rule or Regulation if so desired.

TO: Ryan Johnson

Deputy Real Estate Commissioner

QUESTIONS:

1. Does the South Carolina Real Estate Law, 1976 Code Sections 40–57–10 et seq., prohibit a real estate broker from offering anything of value as an inducement to list real estate with the broker for sale?
2. Does the Real Estate Law, supra, prohibit a broker from offering anything of value as an inducement to purchase through the broker?

STATUTES AND CASES:

[1976 Code of Laws of South Carolina, Sections 40–57–10 et seq.](#);

Rules and Regulations of the South Carolina Real Estate Commission;

S. C. Real Estate Manual, Sixth Edition, 1976.

DISCUSSION:

The question has been presented whether or not the South Carolina Real Estate Laws prohibit a broker from offering an inducement for listing property with the broker, and from offering an inducement for purchasing property through a broker. The inducements in question come in varied forms, including green stamps, motel accommodations and cash payments.

The policy of the Real Estate Commission has been to distinguish between inducements offered generally to all prospective customers and those inducements which are made contingent upon listing or purchasing property. In the case of general inducements, the Commission has no difficulty. But with contingent inducements, the Commission has expressed concern over their legality.

I have examined the South Carolina Real Estate Law and Regulations and have found no language expressly restricting either type of inducement. Section 40–57–170(12) prohibits paying a commission or compensation to any person for

performing broker or sales services as an unlicensed individual. This Section offers no guidelines where the compensation is paid directly to the vendor or vendee of real property.

On page 45 of the Real Estate Manual, under the chapter heading 'Contracts', it states under 'practices to avoid':  
... it is a good idea to avoid the following practices ... Offering any benefit other than your own ability, superior service, or experience to obtain a listing.

This language is purely advisory and is not based on any mandatory statutory directive.

There is a collateral issue present here which is beyond the scope of this Opinion, but which should be acknowledged. The right of an individual to engage in advertising and promotion of his business or his professional ability is a right jealously guarded by the Courts. Therefore, any attempt to restrict the good faith efforts of a salesman to offer benefits to members of the public for using his services will be subject to close scrutiny by the Courts. The statutory authority for such restrictions should be clear and unambiguous, and not assumed as an inherent limitation on the sale of real estate.

\*2 Also, the Federal Government, through its various agencies, continues to expand its efforts to discover artificial barriers to competition which are under the auspices of professional regulation, but which in reality do little more than insure a lack of competition among the regulated professionals.

For the reasons outlined above it is the Opinion of this Office that the Real Estate Commission presently has no actual or implied authority to categorically prohibit brokers from offering inducements to vendors or vendees of real estate. However, like any marketing device, inducements may be abused or used in such a fashion as to violate one or more of the statutory requirements governing professional conduct. The Commission would be able to deal with such abuses on an individual basis.

Further, the Commission can, within its statutory authority to promulgate rules and regulations, examine the subject of sales inducements and impose appropriate regulatory restrictions, if necessary or appropriate.

I have examined the general law as reported in other jurisdictions and I am unable to find legal authority for prohibiting real estate sales inducements absent specific statutory authorization. I have also discussed this matter with Dr. Warner at the University of South Carolina and he agrees with the general concepts of this Opinion.

#### CONCLUSION:

The South Carolina Real Estate Commission presently has no authority to categorically prohibit brokers from offering inducements to prospective purchasers or vendors of real estate. The subject could be treated by Commission Rule or Regulation if so desired.

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Assistant Attorney General

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