

1975 WL 29462 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 3, 1975

*1 Ralph H. Baer, Jr.
Commissioner
South Carolina Real Estate Commission
900 Elmwood Avenue
Columbia, South Carolina 29201

Dear Mr. Baer:

Your letter concerning whether or not the Real Estate Commission can require completion of a 30-hour real estate course prior to licensing without legislative change has been referred to me for reply.

It is clear that under Section 56-1549.9 of the 1962 Code of Laws of South Carolina (as amended) the Real Estate Commission has the authority to require passage of an examination prior to becoming licensed. However, it is not set forth in the statute that the Commission has the authority to require completion of a 30-hour real estate course prior to licensing and in absence of express authority or necessary implication from the language of the statute, the Commission would have no such power.

Such [administrative] bodies, being unknown to the common law, and desiring their authority wholly from constitutional and statutory provisions, will be held to possess only such powers as one conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted. . . . Any reasonable doubt of the existence in the Commission of any particular power should ordinarily be resolved against its exercise of the power. . . . [Emphasis Added] [Calhoun Life Ins. Co. v. Gambrell](#), 245 S.C. 406, 140 S.E.2d 774 (1965); [Piedmont and Northern Railway Co. v. Scott, et al.](#), 202 S.C. 207, 24 S.E.2d 353 (1943); 1967 Attorney General's Opinion H2213 at 7.

Therefore, it is evident that the Real Estate Commission would lack the authority to require the above-mentioned course completion without express authority by statute. Thus, it would be appropriate to amend the statute to grant the Commission the desired authority for this addition requirement.

If this Office can be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

H. Michael Bowers
Law Clerk

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