



ALAN WILSON  
ATTORNEY GENERAL

January 10, 2018

The Honorable Nathan Ballentine, Member  
South Carolina House of Representatives  
320B Blatt Building  
Columbia, SC 29201

The Honorable Daniel P. Hamilton, Member  
South Carolina House of Representatives  
312C Blatt Building  
Columbia, SC 29201

Dear Representative Ballentine and Representative Hamilton:

You seek an opinion “as to the availability of online and distance learning options to satisfy the requirements necessary to obtain a South Carolina real estate license.” By way of background, you state the following:

Pursuant to Title 40, Chapter 57 of the South Carolina Code 1976, all real estate salespeople, brokers, and brokers-in-charge must obtain a license from the Real Estate Commission before they are permitted to practice in South Carolina. S.C. Code Ann. § 40-57-20. Part of this licensing process requires that applicants complete a certain number of hours of “classroom instruction” in the field of real estate. S.C. Code Ann. § 40-57-320. The terms “classroom” and “classroom instruction” are not defined anywhere in chapter 57.

On January 1, 2017, section 40-57-340 of the South Carolina Code 1976 was amended to include, inter alia, subsection (F) which provides:

(F) A prelicensing and continuing education course is eligible for distance learning.

S.C. Code Ann. § 40-57-340(F).

The plain language of section 40-57-340, as amended, appears to permit applicants to participate in real estate licensing courses available online, as well as in traditional brick-and-mortar environments. However, the Real Estate Commission has recently issued a final order concluding that “(t)he amendment allowing the eligibility of distance learning for pre-licensing education courses did not remove the requirement of classroom instruction for prelicensing courses and the established standards approved by the Commission.” The only rationale the Commission gave for its conclusion was that “(prior to approving any pre-licensing distance courses, providers, and instruction, the Commission would have to establish and publish standards relevant for the approval,” and “[t]he Commission and its staff have not begun the process of establishing and publishing standards . . . at this time.”

Therefore, I am requesting an opinion on the following question: In light of section 40-57-340(F), does the term "classroom instruction" encompass online, virtual, and/or distance learning platforms as well as traditional brick and-mortar educational spaces? My concern is that the Commission's interpretation fails to give any effect section 40-57-340(F), contrary to the General Assembly's clear intent in enacting the amendment.

**Law/Analysis**

In your letter, you reference South Carolina Code Ann. § 40-57-320. In pertinent part, that statute provides:

(A) As a condition for and before applying to the commission for licensure, an applicant for a salesperson, broker, or broker-in-charge license shall provide proof to the commission of having met the following educational requirements, in addition to the other requirements of this chapter:

(1) for a salesperson license:

(a) completion of sixty hours of classroom instruction in fundamentals of real estate principles and practices and thirty hours of classroom instruction in advanced real estate principles within five years before the application . . .

(2) for a broker license:

(a) completion of one hundred fifty hours of commission-approved real estate classroom instruction, ninety of which may be the hours required for a salesperson license. . . .

S.C. Code Ann. § 40-57-320 (emphasis added). Additionally, you refer to South Carolina Code Ann. § 40-57-340(F), which states that:

A prelicensing and continuing education course is eligible for distance learning. Certification by the Association of Real Estate License Law Officials (ARELLO) or its subsidiary, the International Distance Education Certification Center (IDECC), is required.

S.C. Code Ann. § 40-57-340(F). As you correctly point out, neither "classroom" nor "classroom instruction" are defined by statute.

The question you present is one of statutory interpretation. As the South Carolina Supreme Court has repeatedly emphasized, "[t]he cardinal rule of statutory interpretation is to

ascertain and effectuate the legislative intent whenever possible.” Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (quoting Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015)). In order to understand and apply the intent of the General Assembly, words must be given their “plain and ordinary meaning” and “sections which are part of the same general statutory law must be construed together and each one given effect.” CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting Sloan v. Hardee, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007); S.C. State Ports Authority v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). In other words, statutes must be read such “‘that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,’ for ‘[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.’” Id. (quoting State v. Sweat, 379 S.C. 367, 377, 382, 655 S.E.2d 645, 651, 654 (Ct. App. 2008), aff’d, 386 S.C. 339, 688 S.E.2d 569 (2010)). “Furthermore, ‘[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.’” Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (quoting Spectre, LLC v. S.C. Department of Health and Environmental Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010)).

Typically, when a term in a statute is not defined, a court will ascribe the common and ordinary meaning thereto. See State v. Hamilton, 276 S.C. 173, 276 S.E.2d 784 (1981). As the Court stated in Hughes v. Edwards, 265 S.C. 529, 535-36, 220 S.E.2d 231, 234 (1975), there are exceptions to this rule:

[o]ne of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute which requires a different interpretation. Investores premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E.2d 642; Martin v. Nationwide Mutual Ins. Co., 256 S.C. 577, 183 S.E.2d 451; Hatchett v. Nationwide Mutual Ins. Co., 244 S.C. 425, 137 S.E.2d 608. An exception to the aforesaid rule of statutory construction is that if the words used have a well recognized meaning in law different from their ordinary and popular significance, then the words are to be presumed to have been used in their legal meaning. Purdy v. Moise, 223 S.C. 298, 75 S.E.2d 605; Coakley v. Tidewater Construction Corp., 194 S.C. 284, 9 S.E.2d 724; Poole v. Saxon Mills, 192 S.C. 339, 6 S.E.2d 761.

While the term “classroom” is usually thought of in a “bricks and mortar” context, the word also means “any place where one learns or gains experience.” See Dictionary.com (meaning of “classroom”). In the age of computers and “high tech,” the concept of “classroom” has taken on a much broader meaning than the traditional “school building” definition.

For example, as was stated in Babb v. Lynn PLUSA et al., 2016 WL 100184 (Pa. 2016), the Pennsylvania court interpreted the words “charter school” broadly as follows:

[w]hile we agree that Section 1722-A(a) of the CSL does not expressly contemplate the creation of cyber schools, it also does not prohibit them. Pennsylvania School Boards Association, Inc. v. Zogby, 802 A.2d 6, 11 (Pa.Cmwlt.2002) (en banc), appeal denied, 823 A.2d 146 (Pa.2003). Where virtual schools otherwise meet the statutory requirements of the CSL, they qualify as valid charter schools. Id. (“The Charter School Law authorizes the creation of any charter school, as long as the entity complies with the requirements for a charter school set forth in the statute. Based on our reading of the statute, we see no reason why a cyber school cannot meet the statutory requirements.”). Thus, the fact that a school is a virtual school as opposed to a bricks and mortar school is of no moment in analyzing whether the school is a charter school under the CSL. See id. at 11-12 (“[T]he statute allows a charter school to be located in ‘any suitable location.’ We believe these words are broad enough to encompass a cyber school. . . . [T]he [CSL] says nothing about teachers providing instruction in the traditional manner in physical classrooms in the old ‘bricks and mortar’ school buildings.”). Because Warner found that governmental immunity under the Tort Claims Act protects charter schools, and because Pennsylvania School Boards Association held that cyber schools qualify as charter schools where they otherwise satisfy the statutory requirements of the CSL, Plaintiffs argument that cyber schools should be analyzed under the second prong of the Snead test is without merit.

(emphasis added).

According to the plain language of section 40-57-340(F), the General Assembly clearly intended to permit online courses to satisfy both the pre-licensing and continuing education requirements established under Chapter 57. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)) (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.”). As such, “classroom instruction” in section 40-57-320 must be construed in such a way as to give full effect to the General Assembly’s intent in amending section 40-57-340 to include subsection (F). Additionally, section 40-57-320 requires only “classroom instruction in the fundamentals of real estate principles,” while section 40-57-340(F) provides that both pre-licensing and continuing education courses are eligible for distance learning and must be certified by the ARELLO or the IDECC; thus, section 40-57-340 is far more specific with regards to what is required of the licensing courses themselves, and therefore controls. Denman, 387 S.C. at 138, 691 S.E.2d at 468 (quoting Spectre, 386 S.C. at 372, 688 S.E.2d at 852). Thus, the only logical way in which these two sections can be read together such that they are each given full force and effect is to read “classroom instruction” to encompass both live, in-person programs as well as online, distance learning courses.

It is also instructive to consider whether other states have interpreted “classroom” more broadly to encompass virtual or online spaces. Michigan, for example, has statutorily defined “classroom courses” to include online programs. Specifically, Michigan’s real estate broker

license laws require completion of 90 hours of “classroom courses,” which are defined as “educational course[s] of instruction that [are] provided at . . . [a] location where a student receives instruction provided by distance learning.” Mich. Comp. Laws Ann. § 339.2501; see also Mich. Comp. Laws Ann. § 339.2504.

A number of other states have statutorily recognized distance learning as equivalent to in-person classroom programs. For instance, the Idaho code defines “live presentation” as “a real estate course that is personally presented by the instructor and personally attended by the student at the same facility, or, if separated by distance, the instructor and student are connected by contemporaneous, two-way audio and visual communication,” Idaho Code Ann. § 54-2004(31) (emphasis added), while a “distance learning course” is defined as “a real estate course that is delivered not as a live course but through a medium in which the instructor and student are separated by both distance and time.” § 54-2004(22). Nevertheless, the requirement that an applicant complete ninety “classroom hours” can be satisfied through either a live presentation or a distance learning course. See Idaho Code Ann. §§ 54-2022(1)(a), 54-2036(2)(e). Similarly, Florida’s real estate licensure code provides that applicants may participate in distance learning courses to satisfy their “classroom hours” requirement. See Fla. Stat. Ann. § 475.17. Illinois, Kentucky, and Washington all have similar provisions equating online courses with live, in-person programs for purposes of meeting real estate licensing requirements. See 225 Ill. Comp. Stat. Ann. 454 / 5-28 (requiring 165 hours of training “in the classroom or by other interactive delivery method between the instructor and the students”); Ky. Rev. Stat. Ann. § 324.085 (requiring certain “classroom or online hours of continuing education” for real estate brokers); Wash. Rev. Code Ann. § 18.85.011(5) (“‘Clock hours of instruction’ means actual hours spent in classroom instruction in any tax supported, public technical college, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institutions as the equivalent of the required number of clock hours”).

Moreover, at least thirty-two states allow online pre-licensing education for loan and mortgage originators.<sup>1</sup> Even beyond the context of real estate, Minnesota, North Carolina,

---

<sup>1</sup> See Ala. Code § 5-26-7 (“Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.”); Alaska Stat. Ann. § 06.60.038 (same); Conn. Gen. Stat. Ann. § 36a-489a (same); Del. Code Ann. tit. 5, § 2407 (same); Ga. Code Ann. § 7-1-1004 (same); Haw. Rev. Stat. Ann. § 454F-6 (same); Idaho Code Ann. § 26-31-307 (same); 205 Ill. Comp. Stat. Ann. 635/7-4 (same); Iowa Code Ann. § 535D.7 (same); Me. Rev. Stat. Ann. tit. 13, § 106 (same); Md. Code Ann., Fin. Inst. § 11-606 (same); Mich. Comp. Laws Ann. § 493.141 (same); Minn. Stat. Ann. § 58A.06 (same); Miss. Code Ann. § 81-18-14 (same); Mo. Ann. Stat. § 443.717 (same); Neb. Rev. Stat. Ann. § 45-730 (same); N.H. Rev. Stat. Ann. § 397-A:5 (same); N.M. Stat. Ann. § 58-21B-7 (same); N.Y. Banking Law §§ 599-f, 599-j (same); N.C. Gen. Stat. Ann. § 53-244.102 (same); N.D. Cent. Code Ann. § 13-10-06 (same); Okla. Stat. Ann. tit. 59, § 2095.8 (same); 7 Pa. Stat. and Cons. Stat. Ann. § 6131.1 (same); 19 R.I. Gen. Laws Ann. § 19-14.10-7 (same); Tenn. Code Ann. § 45-13-304 (same); Tex. Fin. Code Ann. § 180.056 (same); Vt. Stat. Ann. tit. 8, § 2209a (same); Va. Code Ann. § 6.2-1710 (same); Wash. Rev. Code Ann. § 19.146.340 (same); W. Va. Code Ann. § 31-17A-6 (same); Wyo. Stat. Ann. § 40-23-127 (same).

Texas, Utah, and Virginia have all permitted virtual learning platforms in addition to, if not as a replacement for, traditional brick-and-mortar experiences. See In the Matter of the Proposed Permanent Rules Relating to Driver Education Schools and Programs, Minnesota Rules Chapter 7411, 2003 WL 23318827 (Minn. Department of Public Safety Dec. 24, 2003) (adopting “on-line classroom instruction” for adult drivers’ education programs); N.C. Gen. Stat. Ann. § 143-151.49 (providing that “[t]he instruction [for home inspection licensure] may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board”); Tex. Gov’t Code Ann. § 411.188 (“An approved online course provider shall administer the classroom instruction part of the handgun proficiency course in an online format.”); Utah Code Ann. § 58-63-302 (“Each applicant for licensure as an armed private security officer shall . . . successfully complete basic education and training requirements established by rule by the division in collaboration with the board, which shall include 24 hours of classroom or online curriculum.”); Va. Code Ann. § 38.2-1814.1 (providing “[t]he pre-licensing education course [for resident title insurance agents] may be comprised of or include any form of classroom education or distance education,” where “classroom education” means time in a physical classroom with an instructor and “distance education” means instruction delivered or presented by or under the general supervision of an instructor using a medium other than a classroom setting”).

The Federal Department of Labor has even expanded its definition of “classroom training” to include online instruction. Perry v. Unemployment Insurance Review Board of Indiana Department of Workforce Development, 984 N.E.2d 1275, 1281 (Ind. Ct. App. 2013). In December 2005, the Department issued a directive which provides, in relevant part:

Under the [Trade Adjustment Assistance] program, the Department has determined that distance learning may be considered “classroom training” when the degree of certificate received is equivalent to what would have been received if the training had been conducted on campus. This interpretation expands the types of approvable classroom training to include distance learning, where a participant completes all or part of an educational or vocational program in a location far away from the institution hosting the training program.

Dep’t of Labor Directive 09-05, Training and Employment Guidance Letter: Approval of Distance Learning Under the Trade Adjustment Assistance (TAA) Program (U.S.D.L. 2005).

### **Conclusion**

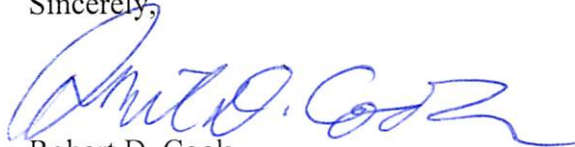
It is our opinion that online and distance learning options meet the requirements necessary to obtain a South Carolina real estate license. We readily acknowledge that reading S.C. Code Ann. § 40-57-320 by itself one might arrive at the conclusion that live, in-person instruction in a physical, brick-and-mortar location is necessary to satisfy the educational requirements for real estate licensure under Chapter 57. However, an alternative definition of “classroom” is “any place where one learns. . . .” Applying South Carolina’s well-established

The Honorable Nathan Ballentine  
The Honorable Daniel Hamilton  
Page 7  
January 10, 2018

rules of statutory construction, we believe a court would determine that by enacting section 40-57-340(F) the General Assembly intended to expand the definition of “classroom” to include online, virtual, and/or distance learning courses as acceptable educational platforms to satisfy the licensing educational requirements. As noted above, the plain language of section 40-57-340 makes perfectly clear the legislature’s intent. See Hodges, 341 S.C. at 85, 533 S.E.2d at 581. Moreover, to the extent there is any conflict between these two statutes, section 40-57-340(F) must prevail because it addresses specific, rather than general, elements of the necessary coursework. See Denman, 387 S.C. at 138, 691 S.E.2d at 468.

Thus, we believe a court will conclude that the term “classroom instruction” includes online, virtual, and/or distance learning programs for purposes of pre-licensing and continuing education courses required for real estate licensure under Chapter 57. Such a conclusion is entirely consistent with case law which concludes that “cyber schools” or “virtual schools” may be deemed just as much a “school” as “brick and mortar” schools. Babb, supra.

Sincerely,



Robert D. Cook  
Solicitor General