

1975 S.C. Op. Atty. Gen. 117 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4042, 1975 WL 22339

Office of the Attorney General

State of South Carolina

Opinion No. 4042

June 30, 1975

***1** Indictment and arrest for murder is not a conviction therefore, and should not constitute a grounds for revocation of real estate license under § 56–1545.16(10).

A complaint submitted by a realtor to the S. C. Real Estate Commission alleging that another realtor intentionally misrepresented the facts about the complaining realtor's professional competence and sales experiences would be a ground for making investigations and suspending or revoking license, if appropriate, under § 56–1545(1).

TO: Mr. Ralph H. Baer, Jr.
S. C. Real Estate Commissioner

QUESTIONS PRESENTED:

(1) Does § 56–1545.16(10), Code of Laws of South Carolina, 1962, as amended, authorize taking action against a realtor arrested and indicted for murder?

(2) Does a complaint by one realtor against another, to the effect that the other realtor intentionally misrepresented the complaining realtor's professional competence and sales experiences constitute grounds for action by the S. C. Real Estate Commission?

STATUTES INVOLVED:

Section 56–1545.16 and .17, Code of Laws of South Carolina, 1962, as amended; [42 U. S. C. A. Section 1983](#).

DISCUSSION OF ISSUES:

(1) S. C. Code § 56–1545.16(10) specifically delineates legal infractions for which a real estate license may be suspended. This Section reads in pertinent part ‘Being convicted in any court of competent jurisdiction . . . or pleading guilty or nolo contendere to any such offense’. (emphasis added). Clearly the legislative intent was to penalize only convictions or pleas of guilty or nolo contendere, and not merely arrests or indictments. The reasoning behind this distinction is well taken and in keeping with that cornerstone of criminal justice, presumption of an accused's innocence at all stages of a criminal prosecution.

It should also be noted that an attempt by the state to deprive an individual of a state-granted franchise for earning a living, before he has been convicted of any wrongdoing, might create liability under [42 U. S. C. A., § 1983](#). Such actions are becoming increasingly prevalent where an attempt to deprive an individual of Federal Constitutional rights by state action can be shown.

(2) S. C. Code § 56–1545.16(1) and .17 allow the Commissioner of Real Estate to make investigations upon a verified complaint together with evidence thereof, to hold hearings and suspend or revoke real estate licenses where a licensee is found by the Commissioner to be guilty of making any substantial misrepresentation.

Under such authority the Commissioner could proceed on a complaint submitted by one realtor alleging that another realtor intentionally misrepresented the facts about complaining realtor's professional competence and sales experiences. In order to remain consistent with prior procedure, the S. C. Real Estate Commission should advise the grievant to submit its formal complaint and supporting evidence directly to the Commission for consideration.

*2 It is obvious that such complaint would authorize investigation only of the party alleged to have committed the offense. Other realtors would not be subject to investigation until or unless a complaint were received alleging violation of S. C. Code § 56-1545.16(3); i.e., alleging a flagrant course of misrepresentation through agents or salesmen.

CONCLUSION:

A murder indictment and arrest would not warrant proceeding against a realtor, pending disposition of his case in a conviction or plea of guilty or nolo contendere.

A formal complaint by one realtor against another, alleging a violation of § 56-1545.16(1), would warrant an investigation and appropriate action by the S. C. Real Estate Commissioner.

George C. Beighley
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