

1975 S.C. Op. Atty. Gen. 190 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4111, 1975 WL 22407

Office of the Attorney General

State of South Carolina

Opinion No. 4111

September 9, 1975

**\*1** The expenditure of real estate commission license funds on studies of the real estate industry must be governed by the direct benefit to be gained by the Commission in carrying out the provisions of Chapter 28, Sections 56–1545 et seq.

TO: Ralph H. Baer, Jr.  
South Carolina Real Estate Commissioner

QUESTION PRESENTED:

Is it appropriate for the South Carolina Real Estate Commission to pay for research projects conducted by the Center for Real Estate & Urban Economics at the University of South Carolina from funds derived from real estate licensing fees?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Sections 56–1545 et seq.

DISCUSSION OF ISSUES:

Section 56–1545.4 establishes the South Carolina Real Estate Commission and gives it the duty to establish the policy, issue general rules and regulations, and advise the Real Estate Commissioner in ‘carrying out the provisions of this chapter’ of the S. C. Code. Section 56–1545.6 allows the Commission to retain such fees and other funds as may come into its possession, ‘in order to carry out the provisions of this chapter.’ Section 56–1545.7 provides that the Commission shall appoint a Real Estate Commissioner who is vested with the ‘administration of the provisions of this chapter.’

The aforementioned sections give the clear impression that in order for the Commission to act or to spend funds, authority for such action must be found in the provisions of the chapter itself. The question then becomes whether or not authorization for the proposed expenditures can be found within these provisions.

There are four research projects for which the Center for Real Estate and Urban Economics is requesting funds. The first is to develop a real estate and property finance data bank for South Carolina. The second is to analyze residential mortgage markets in South Carolina. The third is to make a critique and validation of the questions used on the South Carolina real estate license examinations. The fourth is to determine consumer attitudes about the real estate business.

It again becomes necessary to look at the provisions of the Chapter of the S. C. Code creating the Real Estate Commission. Primarily the law concerns licensing and regulating those individuals engaged publicly in the real estate business. One main concern is setting up licensing procedures and attempting to establish and enforce minimum levels of ability. Another major concern is to investigate and police those required to be licensed in order to detect violations and force compliance with minimum standards of conduct.

It should be noted that at no place in the Code Chapter is the Commission charged with advisory powers or other broad survey powers to compile or collect general information on the real estate industry in South Carolina. Rather,

the Commission's duties are limited to licensing and policing the real estate profession in this state. Since the General Assembly could have granted wide advisory powers but chose not to, it is logical to assume it intended to limit the Commission to a specific regulatory function.

\*2 With this concept of the overall function of the Commission in mind, it appears that only proposed study number three, relating to licensing examinations, would be closely enough related to the purpose of the Commission to warrant expenditure of funds 'in order to carry out the provisions of this chapter.'

It could always be argued that any study which relates to real estate and has some potential benefit to the Commission should be able to be funded as an exercise in carrying out the duties of the Commission. However, it is my opinion that the lack of a grant of general advisory duties to the Commission, coupled with the clear directive to license and police the real estate profession, calls for a narrow view of what studies the commission can pay for out of license funds.

#### CONCLUSION:

A study of the validity and/or effectiveness of the real estate license examination given in South Carolina would be a valid expenditure of funds pursuant to carrying out the 'provisions of this chapter' as outlined by the South Carolina Code. The other studies considered in my opinion are too remotely involved with the current statutory purpose of the Commission to justify such funding.

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