

1973 WL 27713 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 11, 1973

***1 Re: The Establishment of a recovery fund.**

Honorable R. H. Baer
S. C. Real Estate Commissioner
S. C. Real Estate Commission
900 Elmwood Avenue
Columbia, South Carolina 29201

Dear Mr. Baer:

At the request of the Honorable Reddick B. Still, Jr., this office has determined the necessary procedures by which a recovery fund can be established in this State.

The specific question asked by Mr. Still was, that since the S. C. Real Estate Commission did receive a surplus of monies through licensing fees, over and above that which is necessary to pay the ordinary expenses of the S. C. Real Estate Commission, could this money be utilized to establish a state recovery fund for the protection of the public in the event of real estate deformations or other losses. The recovery fund would be utilized when these losses were occasioned through dealings with a license to real estate broker.

It is established law that administrative agency may be vested with rule-making power for the purpose of carrying out the legislative will as expressed in statutory form. [Lee v. Michigan Millers Mutual Insurance Company](#), 250 S. C. 452, 158 2d 774. A statute granting the rule-making power must, however, declare the legislature policy and establish principle standards for carrying it out, [Atlantic Coastline Railway Company v. South Carolina Public Service Authority](#) 245 S. C. 229, 234, 139 2d 911, an arbitrary power or uncontrolled discretion is generally precluded. 2 Am Jur. 2d Administrative Law § 191, 192 at pages 22 and 23. The administrative agency's discretionary power must be exercised only in accordance with the standards prescribed by a statute, [Hodge v. Pollack](#) 223 S. C. 342, 75 2d 752, and only to 'fill up the details' to insure the complete operation and enforcement of the law. [Heyward v. South Carolina Tax Commission](#), 240 S. C. 347, 126 2d 15.

Applying this established law to the question which he posed, it appears that section 56-1545.4 establishing the S. C. Real Estate Commission, and setting forth its powers and duties states 'to establish the policy, issue general rules and regulations, advise the Real Estate Commissioner in carrying out the provisions of this chapter.' It is apparently clear therefore that the rule-making power of the S. C. Real Estate Commission is limited to the provisions of Chapter 28 of the Statutes of South Carolina, and as such to create a recovery fund as you suggest, it is the opinion of this office, that it would require specific statutory authorization by way of a legislative amendment to the present Chapter 28.

I trust that this has been sufficient to answer the question which you posed, if we may be of any further assistance please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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