



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 15, 2004

The Honorable Jeffrey D. Duncan
Member, House of Representatives
P. O. Box 721
Clinton, South Carolina 29325

Dear Representative Duncan:

In a letter to this office you raised a question regarding the licensing requirements for an auctioneer in this State to conduct a real estate auction. Specifically, you asked whether both an auctioneer's license and a real estate license, either as agent or broker, is required to conduct an auction on a piece of real estate.

Pursuant to S.C. Code Ann. Section 40-57-220(A) (2001),

(i) it is unlawful for a person to act as a real estate broker, real estate salesman, or property manager or to advertise or assume to act as such without first having obtained a license issued by the Real Estate Commission. (emphasis added).

A violation of such provision is a criminal offense. For purposes of the chapter including Section 40-57-220, S.C. Code Ann. Section 40-57-30(2001) defines "broker" as

...an individual who for a fee, salary, commission, or other valuable consideration or who with the intent or expectation of receiving compensation:

(b) auctions or offers to auction real estate;....

Therefore, pursuant to Section 40-57-220, in order to auction real estate, a license must be obtained from the State Real Estate Commission.

Pursuant to S.C. Code Ann. Section 40-6-250 (Supp. 2003),

(u)nless exempt from licensure under Section 40-6-370¹, no person shall sell or offer to sell goods or real estate at auction in this State or perform an act for which an auctioneer or apprentice auctioneer license is required unless the person holds a currently valid license issued under this chapter. (emphasis added).

The term "auction" is defined by S.C. Code Ann. Section 40-6-20(2) (Supp. 2003) for purposes of such provision as:

...the sale of goods or real estate by means of exchanges between an auctioneer and a member of an audience, the exchanges consisting of a series of invitations for offers

¹Section 40-6-370 allows for exemptions to licensure for

(1) auctions conducted by the owner of all of the goods being offered unless the owner's regular course of business includes engaging in the sale of goods or real estate by means of auction or unless the owner originally acquired the goods for the purpose of resale;

(2) auctions conducted by or under the direction of a public authority unless conducted by a person or entity engaged in the business of organizing, arranging, or conducting auction sales for compensation or a person or entity licensed pursuant to this chapter or in any other jurisdiction to conduct auctions;

(3) auctions conducted pursuant to a judicial order;

(4) sales required by law to be at auction unless conducted by a person or entity engaged in the business of organizing, arranging, or conducting auction sales for compensation or a person or entity licensed pursuant to this chapter or in any other jurisdiction to conduct auctions;

(5) auctions conducted on behalf of a charitable, civic, or religious organization if the person conducting the sale receives no compensation unless conducted by a person or entity engaged in the business of organizing, arranging, or conducting auction sales for compensation or a person or entity licensed pursuant to this chapter or in any other jurisdiction to conduct auctions;

(6) auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer licensed under this chapter;

(7) auctions by a trustee pursuant to a valid power of sale.

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made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer.

Therefore, pursuant to Section 40-6-250, an individual may not sell real estate at auction unless licensed by the State Auctioneer's Commission.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Consistent with the above, in my opinion, in order to conduct an auction of real estate, there must be involved, either individuals licensed separately by the State Real Estate Commission as a broker and the State Auctioneers' Commission as an auctioneer or a single individual must have licenses from both State agencies. It is my information from an individual with the State Labor, Licensing and Regulation Department, that such construction is consistent with the interpretation of such provisions by that agency.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General