

## The State of South Carolina



## Office of the Attorney General

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September 11, 1991

The Honorable Barbara Stock Nielsen, Ed.D.  
State Superintendent of Education  
South Carolina Department of Education  
1429 Senate Street-Rutledge Building  
Columbia, South Carolina 29201

Dear Dr. Nielsen:

You have requested the opinion of this Office as to whether the South Carolina Department of Education (Department) should retain or make other disposition of fees paid by some real estate schools for the renewal of their licensing by the South Carolina State Board of Education (Board). According to your letter, twelve real estate schools completed applications for the renewal of their license, paid a \$25.00 annual renewal fee and were issued licenses for July 1, 1991 through the June 30, 1992; 1/ however, under legislation effective March 22, 1991, this Office in a previous opinion concluded that real estate schools falling under the terms of S.C. Code Ann. § 40-57-115(a) as added by Act 12, 1991 S.C. Acts 16, are no longer subject to licensure by the Board. Ops. Atty. Gen. June 24, 1991. Those schools are now subject to the regulatory authority of the South Carolina Real Estate Commission (Commission). Id.

According to information provided, applications and fees in question were submitted after the effective date of Act 12, but the State Board's authority had ceased over the schools upon the signing of Act 12 on March 22nd. See Ops. Atty. Gen. June 24, 1991; see also note 1. Because the State Board lacked the authority to license the schools then, it did not have authority to renew the licenses for those schools or charge a fee for doing so.

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1/ A provision under which the Board formerly licensed such schools states that "[l]icenses shall be renewable annually on July 1st provided, ...the renewal fee has been paid..." S.C. Code Ann. § 59-59-50 (1990). Reg. 43-119 (1976) provides, in part, that the "...renewal license fees are for the period July 1 through June 30."

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Therefore, the opinion of this Office is that the fees should be returned to the schools in question. Act 12 indicates no authority for the transfer of such fees to the Real Estate Commission. See section 40-57-115 as added by Act 12 § 12.

In conclusion, the fees submitted to the Department following the signing of Act 12 on March 22, 1991, for the renewal of licenses for those schools from the period July 1, 1991 through June 30, 1992 should be returned to the applicants because the Board lacked the authority then to renew licenses for those schools. This opinion does not address the procedure to be followed for making refunds to the schools in question, but should you have any questions or need additional assistance, please let me know.

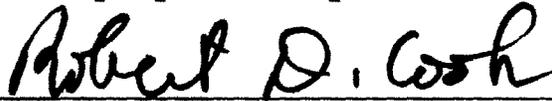
Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:

  
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