

1977 S.C. Op. Atty. Gen. 278 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-349, 1977 WL 24688

Office of the Attorney General

State of South Carolina

Opinion No. 77-349

November 3, 1977

\*1 TO: Kerry W. Koon  
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QUESTION:

May a sole proprietorship acting as a brokerage firm for the purchase and sale of small businesses and publishing a listing of such businesses which are for sale be exempt from licensing requirements for real estate brokers under §§ 40–57–10, et seq., 1976 Code?

STATUTES AND CASES:

Section 40–57–20, 1976 Code of Laws.

Section 40–57–10(1), 1976 Code of Laws.

[Thomas v. Jarvis, 213 Kan. 671, 518 P.2d 532.](#)

DISCUSSION:

Section 40–57–20, 1976 Code, states:

It shall be unlawful for any person to act as a real estate broker, counselor, real estate salesman, appraiser, property manager, or real estate auctioneer, or to advertise or assume to act as such without first having obtained a license issued by the Real Estate Commissioner.

Section 40–57–10(1) defines the term ‘broker’ to mean

. . . any person who for a fee, commission or other valuable consideration, or with the intent or expectation of receiving a fee, commission or consideration, negotiates or attempts to negotiate the listing sale, auction, purchase, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or who advertises or holds himself out as engaged in any of the foregoing activities. The term also includes any person employed by or on behalf of the owner of real estate to conduct the sale, auction, leasing, or other disposition thereof at a salary or for a fee, commission or any other consideration. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both. [emphasis supplied]

It is readily apparent that the statute is quite comprehensive in its terms and is intended to have a prophylactic effect by including within its requirements all manner of real estate sales carried out with a view toward receiving some type of compensation. The fact that an individual does not ‘wish’ to be known as a real estate broker is irrelevant if the effect of his actions brings

him within the purview of the statute. Similarly, ineffectual as a bar to the requirement of obtaining a real estate license is the argument that an individual wishes to be only a 'business' broker, in the sense that he will be involved in the sale of small businesses 'lock, stock and barrel,' with the transfer of real property and fixtures thereto being only 'incidental' to the sale of the business. The statute includes the sale or listing of 'any real estate or of the improvements thereon' [emphasis supplied].

[Thomas v. Jarvis](#), 213 Kan. 671, 518 P.2d 532, interpreted a provision similar to South Carolina's statute, and concluded that a business broker contracting to sell the assets of companies which included real property is a 'real estate broker' and must be licensed as such.

CONCLUSION:

\*2 A brokerage firm for the purchase and sale of small businesses, 'lock, stock and barrel,' and involving in the transaction the transfer of real property, must obtain a real estate broker's license.

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