

1979 WL 43539 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 22, 1979

\*1 David E. Martin, Esquire  
S.C. Real Estate Commission  
2221 Devine Street—Suite 530  
Columbia, South Carolina 29205

Dear David:

This is in reply to your letter of August 15, 1979, and in confirmation of our telephone conversation on this date. You had requested an opinion concerning the procedure by which the Real Estate Commission should promulgate its policy for the approval of real estate schools as required by [§ 40-57-100, Code of Laws of South Carolina](#), 1976. It is the opinion of this Office that this should be done by rule or regulation promulgated pursuant to the Administrative Procedures Act, specifically [§ 1-23-110](#), 120, Code of Laws of South Carolina, 1976 (as amended).

The Commission is given the power to issue general rules and regulations. [Id.](#), § 40-57-50. Furthermore, the Commission is given the responsibility, as part of its licensing function for real estate salesmen and other individuals, to approve certain institutions and organizations which provide instruction in the basic principles of real estate. [Id.](#), § 40-57-100.

You stated that the Commission wishes to adopt standards by which it would approve those institutions and organizations. The Administrative Procedures Act appears to require that such standards be promulgated by regulation, insofar as they would be an ‘agency statement of general public applicability that . . . prescribes . . . policy or practice requirements of [that] agency.’ [Id.](#), § 1-23-10(4). Such regulations must be promulgated in accordance with the provisions of the Administrative Procedures Act. [Id.](#), § 1-23-110, 120. The Commission would have a certain amount of discretion in adopting such regulations, but any regulations adopted must not conflict with or change any statute conferring powers upon the Commission. [Fisher v. J.H. Sheridan Co.](#), 182 S.C. 316, 326, 189 S.E. 356, 360 (1936).

Sincerely yours,

David C. Eckstrom  
State Attorney

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