

1978 S.C. Op. Atty. Gen. 171 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-134, 1978 WL 22602

Office of the Attorney General

State of South Carolina

Opinion No. 78-134

July 12, 1978

*1 Mr. Joseph V. Pendergrass
Proprietary School Supervisor
State Approving Section
South Carolina Department of Education
Rutledge Office Building
Columbia, SC 29201

Dear Mr. Pendergrass:

I am receipt of your latest correspondence dated May 9, 1978, requesting an opinion from this Office whether the State Board of Education was empowered to license real estate schools. Please accept my apology for the delay in responding.

The State Board of Education is given broad authority to license and regulate proprietary schools under § 59–59–30 of the 1976 Code of Laws, as amended. A ‘Proprietary School’ is defined in § 59–59–20 as:

(1) ‘Proprietary school’ means any person offering resident or correspondence courses to students upon the payment of tuition or fees.

(2) The definition of a proprietary school shall not include the following:

(a) A school or educational institution supported entirely or partly with State funds.

(b) A parochial or denominational school or institution or members of the South Carolina Independent School Association, Incorporated.

(c) A school or training program which offers instruction primarily in the field of an avocation, recreation, health, or entertainment, as determined by the State Board of Education.

(d) Courses of instruction or study sponsored by an employer for the training and preparation of its own employees.

(e) Courses of instruction or study sponsored by recognized trade, business, or professional organizations for the instruction of their members.

(f) Private colleges and universities which award an associate, baccalaureate, or higher degree.

(g) A school offering a program only for children twelve years of age or younger.

(h) A school which is regulated and licensed under an occupational licensing act of the State.

(i) Courses of instruction or study where the tuition charge does not exceed twenty-five dollars for the complete course of instruction.

(j) Private school offering courses of instruction to resident and/or day students of legal age at the elementary and secondary level.

Real estate schools are proprietary schools under the definition above, unless the school meets one of the exceptions above.

Specifically, you inquired as to whether the Real Estate Commission had pre-empted the Board's power in section (h) above. The Real Estate Commission had broad power under § 40-57-10 et. seq. of the 1976 Code of Laws, as amended, to regulate and license real estate brokers, counsellors, salesmen, etc. § 40-57-100, as amended, gives the Commission power to approve many pre-requisites for taking the examination for a real estate license, one being the requirement that the institution be approved by the Real Estate Commission.

There is no indication in the Act that the Legislature intended to grant the Real Estate Commission authority to regulate and license real estate schools. The Real Estate Commission's authority deals primarily with the licensing of real estate brokers. The Board's authority deals with the licensing of schools.

*2 It is the opinion of this Office that the State Board of Education has the legal authority to license and regulate real estate schools, assuming the school qualifies as a proprietary school under § 59-59-20, supra.

Respectfully submitted,

Frank H. DuRant
Assistant Attorney General

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