

1978 WL 35237 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 22, 1978

*1 The Honorable Fred B. Beall
South Carolina Real Estate Commission
2221 Devine Street—Suite 530
Columbia, South Carolina 29205

Dear Commissioner Beall:

You requested an opinion whether the South Carolina Real Estate Commission has the authority to enter into a contract with both the United States Department of Housing and Urban Development (HUD) and the National Association of Real Estate License Law Officials (NARELLO). The proposed contract would obligate the Commission to take certain specified steps to promote fair housing. It is our opinion that the Commission does not have the authority to execute such a contract. Furthermore, the proposed contract would require actions by the Commission that exceed the Commission's statutory authority.

The merits of fair housing laws and equal housing opportunities for all persons is not addressed by this opinion. Rather, the question is to determine whether the Commission possesses the power by law to execute this particular contract. The Commission is given the following general powers:

- (1) to establish policy,
- (2) to issue general rules and regulations pursuant to the real estate licensing statute, and
- (3) to advise the Real Estate Commissioner in carrying out the provisions of the real estate licensing statute. [§ 40-57-50, S.C. CODE, 1976.](#)

The Commission is not given the power generally to make and execute contracts. This limitation was underscored by the Legislature in the recent statute which specifically authorized the Commission to contract with another state agency to conduct real estate license examinations for the Commission. Act No. 534, S.C. ACTS AND JOINT RES., 1978. Therefore, since the Commission does not possess the general power to make and execute contracts, it is our opinion that the Commission does not currently have the statutory authority to execute this contract in question.

However, even if the Commission did possess the general authority to make and execute contracts, it is our opinion that the Commission could not perform substantial parts of this contract due to lack of statutory authority as to particular provisions. Principally, the Commission does not have the authority to enforce federal fair housing laws against licensees. [See § 40-57-170, S.C. CODE, 1976.](#) Furthermore, there is no state fair housing law or regulations to be enforced, and the Commission lacks the authority to promulgate any fair housing regulations. [See generally 2 Am.Jur.2d 'Administrative Law,' § 300.](#) There are other particular provisions which the Commission would not be permitted by law to perform. This lack of statutory authority would vitiate much of the contract and frustrate its purpose.

However, it is our opinion, as stated above, that the Commission does not possess the statutory authority to execute this contract regardless of the details of particular provisions. Therefore, the Commission would be advised not to execute the proposed contract.

Sincerely yours,

*2 David C. Eckstrom
Staff Attorney

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