

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at \_\_\_\_\_  
Chairperson

1:30 a.m./p.m. on March 27, 1984 in room 526S of the Capitol.

All members were present except:

Committee staff present:

Russ Mills, Research Department  
Mary Torrence, Revisor of Statute's Office

Conferees appearing before the committee:

Mike Byington, Kansas Association of Blind and Visually Impaired  
Robert Tabor  
Janet Stubbs, Homebuilders of Kansas  
Todd Sherlock, Kansas Association of Realtors

The meeting was called to order by Chairman Miller.

Representative Peterson made a motion, seconded by Representative Grotewiel, to approve the minutes of the March 22 meeting. The motion carried.

HB3032 - secured loads for livestock

Representative Goosen made a motion, seconded by Representative Hensley, to adopt an amendment as per attachment A to HB3032. The motion carried.

Representative Sughrue made a motion, seconded by Representative Roe, to report HB3032 favorable for passage as amended. The motion carried.

HB3008 - Automobile injury reparation act

Representative Matlack made a motion, seconded by Representative Eckert, to report HB3008 adversely. The motion carried.

SB748 - Sight handicapped in food service

Mike Byington, Kansas Association of Blind and Visually Impaired, Inc., gave testimony in support of the bill which clarifies current law. A lot of restaurant employees assume that health code regulations mean guide dogs cannot go into their establishment. The bill would make the law more visible.

Robert Tabor, an attorney and guide dog user, gave testimony in support of the bill.

See attachment B for written testimony of Mr. Byington & Mr. Tabor.

Hearings were concluded on SB748.

HB3117 - Real Estate License Act

Janet Stubbs, Homebuilders of Kansas, explained the bill and why she felt it was necessary. This bill speaks only to new construction owned by the builder/developer. See attachment C.

There was discussion of the real estate recovery fund and its use. Also discussed was the definition of "occasional sale".

Todd Sherlock, Kansas Association of Realtors, gave testimony in opposition to the bill. Under this bill, unlicensed individuals who have no financial interest in real estate developments would be able to sell new homes to the public. See attachment D.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Federal & State Affairs,  
room 526S, Statehouse, at 1:30 a.m./p.m. on March 27, 1984.

There was discussion concerning civil suits which must be filed before going before the Real Estate Commission by aggrieved home-buyers.

Paul Flower, Real Estate Commission, submitted written testimony in opposition to the bill. See attachment E.

Hearings were concluded on HB3117.

SB748 - Sight handicapped in food service

Representative Hensley made a motion, seconded by Representative Runnels, to report SB748 favorable for passage. The motion carried.

HB3117 - Real Estate

Representative Goosen made a motion, seconded by Representative Smith, to report HB3117 favorable for passage. A division was called. The motion carried.

HCR5082 - Pari-mutuel

Representative Aylward made a motion, seconded by Representative Peterson, to amend the bill as per attached amendment. See attachment F. The motion carried.

Representative Peterson made a motion, seconded by Representative Runnels, to report HCR5082 favorable for adoption as amended. The motion carried.

HB2966 - Residency Requirements

Representative Hensley made a motion, seconded by Representative Smith, to include on line 38, after "adopts" "or has adopted". The motion carried.

Representative Hensley made a motion, seconded by Representative Sughrue, to report favorably as amended. The motion carried.

The meeting was adjourned.

## HOUSE BILL No. 3032

By Committee on Agriculture and Livestock

2-17

0016 AN ACT concerning traffic loads; livestock loads on vehicles;  
0017 amending K.S.A. 8-1906 and repealing the existing section.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. K.S.A. 8-1906 is hereby amended to read as fol-  
0020 lows: 8-1906. (a) No vehicle shall be driven or moved on any  
0021 highway unless such vehicle is so constructed or loaded as to  
0022 prevent any of its load from dropping, sifting, leaking or other-  
0023 wise escaping therefrom, except that: (1) This section shall not  
0024 prohibit the necessary spreading of any substance in highway  
0025 maintenance or construction operations *and (2) this section shall*  
0026 *not apply to trailers or semitrailers hauling livestock if such*  
0027 *trailers or semitrailers are properly equipped with a cleanout*  
0028 *trap and such trap is operated in a closed position.*

0029 (b) No person shall operate on any highway any vehicle with  
0030 any load unless ~~said~~ such load and any covering thereon is  
0031 securely fastened so as to prevent ~~said~~ the covering or load from  
0032 becoming loose, detached or in any manner a hazard to other  
0033 users of the highway.

0034 Sec. 2. K.S.A. 8-1906 is hereby repealed.

0035 Sec. 3. This act shall take effect and be in force from and  
0036 after its publication in the statute book.

when

unless material is intentionally spilled when cleanout trap or traps are in a closed position. All such trailers or semitrailers shall be cleaned periodically.

*Atch. A*



# Kansas Association for the Blind and Visually Impaired, Inc.

March 27, 1984

TO: House Federal and State Affairs Committee

FROM: Legislative Committee:  
Mary Adams, Chair  
Michael J. Byington, Registered Lobbyist  
Robert L. Tabor, Member and guide dog user

SUBJECT: Senate Bill 748

BACKGROUND: K.S.A. 39-1102 gives blind persons the right to be accompanied by a guide dog, especially trained for the purpose, in or upon any of the places listed in K.S.A. 39-1101 without being required to pay an extra charge for the guide dog provided that such blind person shall be liable to any damage done to the premises or facilities by such dog. The places listed in K.S.A. 39-1101 are: (1) all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or any other conveyances of public transportation; (2) hotels, lodging places, places of public accommodation, amusement, or resort; and (3) other places to which the public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

NEED FOR LEGISLATIVE CHANGE: The above "laundry list" implies that eating establishments and food sales establishments would be included, but does not specifically state such. In fact, these establishments are included as has been affirmed by Kansas Department of Health and Environment regulations and a court test. The problem is, however, that some eating establishment and food sales establishment employees do not realize that guide dogs may be admitted. They assume that guide dogs are considered as subject to the conditions of law applicable alike to all persons which state that dogs may not enter eating establishments or food sales establishments. Confusion and delay becomes the result. The fact that the guide dog has the right to admission thus needs to become more visible within the body of Kansas law. K.S.A. 39-1101 and 1102 are the appropriate sections of law to be amended as most guide dog users carry copies of these statutes in order to answer questions of access which may arise. Senate Bill 748 thus has the purpose of adding reference to eating establishments and food sales establishments to the "laundry list" in K.S.A. 39-1101. The bill does not actually change function of law; it only clarifies it. Washington, D.C. and 38 states have already made the change being requested here. Please promptly report this bill favorably so it may become law this session. Thank you.



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TESTIMONY BEFORE  
HOUSE FEDERAL AND STATE AFFAIRS  
MARCH 27, 1984  
BY  
JANET STUBBS  
HOME BUILDERS ASSOCIATION OF KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR OF THE HOME BUILDERS ASSOCIATION OF KANSAS WHICH HAS APPROXIMATELY 1800 MEMBERS STATEWIDE.

PLEASE KEEP IN MIND AS WE DISCUSS THE ISSUE ADDRESSED IN HB 3117, WE ARE SPEAKING ONLY TO NEW CONSTRUCTION OWNED BY THE BUILDER/DEVELOPER.

WE STRESS THIS POINT BECAUSE IT MAKES A SIGNIFICANT DIFFERENCE WHEN THERE IS NO THIRD PARTY OWNER OF PROPERTY TO BE REPRESENTED.

HB 3117 WOULD PERMIT AN UNLICENSED EMPLOYEE OF A BUILDER/DEVELOPER TO PERFORM THE 4 FUNCTIONS LISTED ON LINES 70 THROUGH 75 OF THE BILL.

IT PROHIBITS HIM FROM PERFORMING THE ACTUAL "SALE" OF THE PROPERTY WITHOUT LICENSURE.

CURRENT LAW PERMITS THE BUILDER/DEVELOPER TO SELL HIS/HER OWN PROPERTY WITHOUT LICENSURE.

THE BILL BEFORE YOU IS A COMPROMISE POSITION OF THE HBAK BECAUSE IT DOES NOT SOLVE THE ENTIRE PROBLEM WHICH HAS BEEN EXPRESSED BY MY MEMBERSHIP.

FOR EXAMPLE, DEVELOPERS TELL ME THEY ARE OFTEN UNABLE TO FIND LICENSED SALESPeOPLE TO SIT DAILY IN A MODEL HOME OPEN HOUSE IN A SUBDIVISION BECAUSE THE MONETARY REWARDS ARE NOT SUFFICIENT TO JUSTIFY THE TIME SPENT THERE.

THE BUILDER IS FACED WITH SITTING IN THE OPEN HOUSE HIMSELF, WHICH IS NOT PRUDENT USE OF HIS TIME, OR HIRING AN UNLICENSED SALESPERSON FOR THE PURPOSE, WHICH IS CURRENTLY PROHIBITED BY LAW.

I AM TOLD IN INSTANCES WHERE THE BUILDER RESORTS TO THE UNLICENSED PERSON, NO COMPLAINT IS HEARD AS LONG AS THE PROPERTY IS LISTED WITH A BROKER AND A COMMISSION PAID THE BROKER.

HB 3117 DOES ADDRESS THE PROBLEM WHERE THE BUILDER/DEVELOPER'S EMPLOYEE IS ON THE SITE AND IS APPROACHED BY A PROSPECTIVE BUYER.

*Atch. c*

THE INTENT OF PROVISIONS OF HB 3117 IS TO ALLOW THE SITE EMPLOYEE TO AVOID LOSING A POSSIBLE SALE BECAUSE HE CANNOT DISCUSS THE PROPERTY. KEEP IN MIND THIS MAY BE A FOREMAN ON THE CONSTRUCTION WHO WOULD KNOW FAR MORE ABOUT THE DETAILS OF THE DWELLING THAN A LICENSED PERSON FROM A BROKER'S OFFICE.

SINCE INITIATION OF DISCUSSIONS WITH REC AND KAR, THERE HAVE BEEN EXPRESSIONS OF CONCERN REGARDING PUBLIC PROTECTION ON REAL ESTATE TRANSACTIONS.

HBAK BELIEVES THE LAW PROVIDES FOR RESPONSIBILITY OF THE BUILDER/DEVELOPER FOR ACTIONS BY AN EMPLOYEE JUST AS ANY OTHER EMPLOYER IS RESPONSIBLE FOR AN EMPLOYEE.

THE OPPOSITION'S ARGUMENT HAS BEEN THAT LICENSURE ALLOWS PROSPECTIVE BUYERS ACCESS TO THE REAL ESTATE RECOVERY FUND. HOWEVER, K.S.A. 58-3068 (c) (3) SEEMS TO EXEMPT SUCH RECOVERY.

(c) "A PERSON SHALL NOT BE QUALIFIED TO MAKE A CLAIM FOR RECOVERY FROM THE REAL ESTATE RECOVERY REVOLVING FUND, IF:"

(3) "SUCH PERSON'S CLAIM IS BASED UPON A REAL ESTATE TRANSACTION IN WHICH THE LICENSED BROKER OR SALESPERSON WAS ACTING ON THE BROKER'S OR SALESPERSON'S OWN BEHALF WITH RESPECT TO PROPERTY OWNED OR CONTROLLED BY SUCH BROKER OR SALESPERSON."

IT HAS BEEN OUR POSITION THAT RECOVERY OF ANY DAMAGES BY AN AGGRIEVED PARTY FROM A BUILDER/DEVELOPER COULD EXCEED THE AMOUNT TO WHICH HE WOULD BE LIMITED BY THE RECOVERY FUND.

ON MARCH 7, THE SENATE WAYS AND MEANS COMMITTEE INTRODUCED SB 830 WHICH WOULD ABOLISH THE RECOVERY FUND IN LIEU OF ERRORS AND OMISSIONS INSURANCE.

THERE HAS BEEN IMPLICATIONS BY THE OPPOSITION THAT INTRODUCTION OF THIS ISSUE WAS A MEANS OF "OPENING UP" THE REAL ESATE LICENSE LAW" AND SUBJECTING THE PROSPECTIVE HOME BUYER TO INFERIOR INFORMATION ON THE PRODUCT FOR SALE. THIS IS CERTAINLY NOT OUR INTENT AND IT WOULD NOT BE COMPATIBLE WITH THE INTERESTS OF A BUILDER TO HAVE PEOPLE WHO ARE NOT KNOWLEDGEABLE ABOUT THE PRODUCT OR WHO DO NOT MAKE A GOOD PRESENTATION TO THE PUBLIC REPRESENTING HIM. THE FUTURE BUSINESS OF THE BUILDER DEPENDS UPON THE PROSPECT'S CONTACT WITH THE BUILDER'S REPRESENTATIVE.

WE HAVE NOT FELT OUR REQUEST WAS UNREASONABLE, EVEN THE ORIGINAL REQUEST FOR AMENDMENT CONTAINED IN SB 531, IN LIGHT OF THE 1980 LEGISLATIVE POST AUDIT REPORTS' CONCLUSION THAT THE EXPENSE BY THE STATE OF LICENSURE OF

SALESPERSONS APPEARED UNWARRANTED DUE TO THE LACK OF EVIDENCE THAT THE PUBLIC WOULD BE HARMED WITHOUT STATE REGULATIONS OF THIS PARTICULAR SEGMENT. THIS WAS BASED UPON THE REVIEW OF COMPLAINTS FILED WITH THE REAL ESTATE COMMISSION IN WHICH A SMALL PER CENT WERE AGAINST SALESPERSONS AND, IN THOSE INSTANCES, THE SALESPERSON'S SUPERVISOR, (EMPLOYER/BROKER), WAS LEGALLY RESPONSIBLE FOR THE ACTIONS OF THEIR EMPLOYEES.

I KNOW OF NO COMPLAINTS TO THE COMMISSION ON MISHANDLED TRANSACTIONS BY BUILDERS.

WE HAVE DISTRIBUTED A LETTER REGARDING OCCASIONAL SALES FROM THE EXECUTIVE DIRECTOR OF THE REAL ESTATE COMMISSION AND A COPY OF A 1981 LETTER FROM THE DEPARTMENT OF REVENUE TO THE KANSAS ASSOCIATION OF REALTORS REGARDING OCCASIONAL SALES OF MOBILE HOMES.

WE ASK THAT THE COMMITTEE'S DECISION BE BASED UPON THE FOLLOWING:

1. SAVINGS TO THE HOME BUYING PUBLIC OF NEW HOMES. THIS WOULD PROBABLY RESULT IN THE SALE OF AN EXISTING HOME BY A LICENSED SALESPERSON. WE ARE NOT ASKING FOR THE ABILITY TO SELL OUR TRADE-IN PROPERTIES WITHOUT LICENSED PEOPLE INVOLVED.
2. THIS SAVINGS WOULD COME WITH AS MUCH PROTECTION AS A TRANSACTION ON A SIMILAR SALE BY A LICENSED SALESPERSON.
3. THE TRANSACTIONS INVOLVED ARE ON NEW HOMES ONLY AND ARE OWNED BY THE BUILDER/DEVELOPER AND THE REPRESENTATIVE INVOLVED WOULD ALSO BE THE EMPLOYEE OF THE OWNER/DEVELOPER OF THE PROPERTY. THERE IS NO 3RD PARTY OWNER INVOLVED AS THERE IS ON AN EXISTING HOME.
4. WE ARE ATTEMPTING TO MAKE IT EASIER FOR THE BUILDER TO CONDUCT HIS BUSINESS.



*Kansas*  
DEPARTMENT OF REVENUE

State Office Building  
TOPEKA, KANSAS 66626

Division of Vehicles

October 7, 1981

Kansas Association of Realtors  
3644 Burlingame Road  
Topeka, Kansas 66611

Attention: J. W. Mayer

Dear Mr. Mayer:

Our legal department has issued an interpretation of the amendment to K.S.A. 1980 Supp. 8-2401 Sec. (E) as follows:

"The occasional sale of a mobile home by a real estate salesman does not require a mobile home dealer's license. On the other hand, regular repeated sales of such units would probably require a mobile home dealer's license."

We are furnishing you with this opinion to clarify the statement made in your letter to Kansas real estate agents with reference to the requirement of having a mobile home dealer's license for the occasional sale of a mobile home.

If we can be of any further assistance, please feel free to call on us.

Very truly yours

*HBT*  
Harold B. Turntine  
Administrative Aide  
Division of Vehicles

HBT:gju  
cc: Jack McCord, Acting Director  
Marcus Woods  
Lowell Wriston

C  
O  
P  
Y





March 20, 1984

STATE OF KANSAS

**KANSAS  
REAL ESTATE  
COMMISSION**

PHONE: (913) 296-3411  
217 East Fourth  
TOPEKA, KANSAS 66603

**COMMISSIONERS:**

IGNATHUS "ICKIE" KISNER  
1ST CONGRESSIONAL DISTRICT  
STAFFORD

DORA L. "SUSIE" FARMER  
CHAIRPERSON  
2ND CONGRESSIONAL DISTRICT  
TONGANOXIE

M. W. PERRY III  
3RD CONGRESSIONAL DISTRICT  
OVERLAND PARK

TERRY F. MESSING  
VICE-CHAIRMAN  
4TH CONGRESSIONAL DISTRICT  
HUTCHINSON

THERESA M. KARLESKINT  
5TH CONGRESSIONAL DISTRICT  
PARSONS

J. PAUL FLOWER  
DIRECTOR

MEMBER:  
NATIONAL  
ASSOCIATION  
OF  
REAL ESTATE  
LICENSE LAW  
OFFICIALS

The Honorable Ben E. Vidricksen  
Chairman, Subcommittee  
Senate Federal and State Affairs  
Room 143-N  
Capitol Building

Dear Senator Vidricksen:

RE: S.B. 531

S.B. 531 provides for exemption from the License Act for employees of homebuilders. The commission and the Kansas Association of Realtors have testified against the bill.

First, a homebuilder may sell his own property regardless of the financial structure of his business. This is provided for in K.S.A. 58-3037 (a) if the business is a proprietorship or partnership; (j) if the business is a corporation. However, this is not the question.

Second, the question is to what limit may an employee of a homebuilder show the property. If the employee is not compensated for showing the home then the commission does not consider the employee to be under the scope of the act. K.S.A. 58-3035 (c) requires the person to be compensated before the activity falls under the jurisdiction of the License Act. The employee, if basically compensated to perform activities related to building the home, could do the following activities so long as the employee was not compensated additionally for the following activities.

1. Escort a prospect who arrives at the property and expresses an interest in the property.

2. Give a prospect who arrives at the property any written information pertaining to the property, provided that such written information contains a statement that it was prepared or authorized by the person, partnership, association or corporation who constructed such home, and point out where certain information may be found therein. If a question arises that cannot be answered from such written information, the employee shall inform the prospect to whom the question may be addressed. The employee shall not make statements concerning the terms and conditions of sale or any other factual representations concerning the property, other than information contained in the prepared statement.

Senator Vidricksen  
March 20, 1984  
Page Two

3. An unlicensed employee, who does not qualify for exemption under K.S.A. 58-3037(a) or (j), may not negotiate a contract of sale, arrange any terms of financing other than those stated in the printed material prepared by the homebuilder, or give estimates of trade-in values related to the prospect's property.

This concept is in keeping with the commission's understanding of the law as announced by the Attorney General. You and I, as individuals, can sell our own property. You and I, as individuals, cannot compensate an unlicensed person to sell our property for us. You and I, as individuals, can expect an employee to assist us in selling our own property within the limits of that information or directions which we, as owners, prepare for the employee.

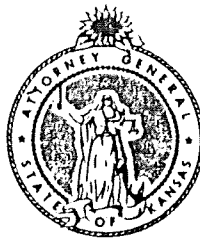
The homebuilders differ from the S & L's, for example. An employee of the S & L currently can sell those repossessions acquired in the normal course of business. In those cases the sale of the property is not a primary activity of the S & L. The sale of homes, not previously occupied, is the expected end result of new home building.

We feel the present law and regulations are adequate and do not need modification.

Respectfully,



J. Paul Flower, Director  
Kansas Real Estate Commission



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KANS. REAL ESTATE COMM.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 1, 1981

MAIN PHONE (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 81-207

Kansas Real Estate Commission  
Room 1212  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: Personal and Real Property -- Real Estate Brokers and  
Salesmen -- Permissible Activities of Unlicensed "Tour Guides"

Synopsis: An individual who is employed to act solely as "tour guide" for a developer, and whose functions and duties do not involve assisting or directing in the procuring of prospective buyers or customers or otherwise contravene the provisions of K.S.A. 1980 Supp. 58-3035(c)(8), is not required to be licensed as a real estate broker or salesperson. Cited herein: K.S.A. 1980 Supp. 58-3035, 58-3036.

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Dear Commissioners:

You inquire whether an individual who is employed to act solely as a "tour guide" for a developer violates the proscription provided at K.S.A. 1980 Supp. 58-3036 as that provision is further defined at K.S.A. 1980 Supp. 58-3035(c)(8).

K.S.A. 1980 Supp. 58-3036 states in part:

"No person shall . . . (c) perform or offer, attempt or agree to perform any act described in subsection (c) of K.S.A. 1980 Supp. 58-3035, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act."

K.S.A. 1980 Supp. 58-3035(c) (8) states:

"(c) 'Broker' means an individual, other than a salesperson, who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owners of real estate:

. . . .

"(8) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate."

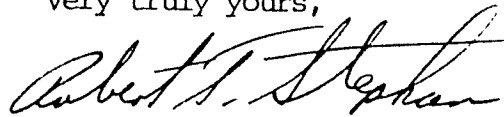
It is our understanding that, in the situation at hand, the "tour guide" will assist the developer, or the licensed real estate broker retained by the developer, by escorting a prospect who arrives at the property and expresses an interest in viewing lots and amenities being offered. The tour guide will not be authorized to make statements concerning the terms or conditions of sale or any other factual representations concerning the project. The tour guide will, however, be permitted to show where such information may be found in the Kansas Public Offering Statement or the HUD Property Report. If a question should arise that cannot be answered by either of those documents, then the tour guide will be required to inform the prospect that only a licensed real estate salesman or broker may answer such questions. Once a prospect has toured the property, he or she will be brought back to the sales office to be interviewed by licensed personnel.

In the context of your inquiry, the crucial question to be resolved is whether the tour guide's stated activities can be construed as assisting or directing in the "procuring of prospects calculated to result in the sale, exchange or lease of real estate." K.S.A. 1980 Supp. 58-3035(c) (8), supra.

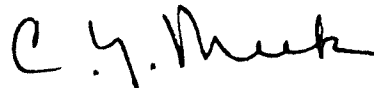
In determining whether 58-3035(c)(8) applies to the tour guide's stated activities, we must ascertain and give effect to the intent of the legislature, as expressed by the language of the statute. Randall v. Seemann, 228 Kan. 395, 397 (1981), and cases cited therein. The terms "procuring" and "prospects" are not defined by the act and, accordingly, must be accorded their ordinary meanings. K.S.A. 77-201, Second; see, also, Personal Thrift Plan of Wichita, Inc. v. State, Kansas Supreme Court, No. 52,592, filed June 10, 1981. In Webster's Third New International Dictionary (1968), "procure" is defined as "to get possession of: obtain, acquire" (at pg. 1809); "prospect" is defined as a "potential buyer or customer" (at pg. 1821).

Given the plain and ordinary meanings of these terms, it is apparent that the legislature intended to preclude persons who are not licensed as real estate brokers or salesmen from assisting in the obtaining or acquiring of potential buyers or customers. Accordingly, it is our opinion that the duties of the tour guide, as previously set forth herein, do not involve assisting in the "procuring of prospects." Rather, once the individual arrives at the developer's property for a tour and expresses interest in seeing the property, the individual has already become a "prospect," i.e., a potential buyer or customer. It follows, then, that the activity undertaken by the tour guide subsequent to this point in time and prior to any sale, cannot be considered as assisting in procuring, since the act of procuring the prospect has been completed at the time of the prospect's arrival. Under these circumstances, therefore, it is unnecessary for the tour guide to be licensed as a real estate broker or salesperson. However, we must caution that this opinion is based solely on the specific facts provided by you, and any deviation therefrom may result in a different conclusion.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General



Christopher Y. Meek  
Assistant Attorney General

RTS:TDH:CYM:may

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KANS. REAL ESTATE COMM.





Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Mr. Chairman and members of the Committee, my name is Todd Sherlock and I represent the Kansas Association of REALTORS. Our association is very concerned with House Bill 3117. If H.B. 3117 were to become law, unlicensed individuals who have no financial interest in real estate developments would be able to sell new homes to the public. We are convinced this is not in the best interest of the home-buying public to radically alter the intent of the real estate brokers' and salespersons' license act.

The language the Homebuilder's seek to employ is found on lines 67-78 on page 2 of H.B. 3117 and lines 195-197 of page 6 of the bill. The language on lines 67-78 has been proposed to the Kansas Real Estate Commission as a way to allow for more leniency for the Homebuilder's employees to sell new homes for a developer. The Kansas Real Estate Commission has rejected this language as being too cumbersome to be enforceable. How would the Real Estate Commission be able to determine if an employee was acting within the provisions of the law even if the new language the Homebuilders want was implemented into the license law?

The problem, as we see it, involves three issues--how is this unlicensed employee to be compensated, how will the Real Estate Commission enforce these new provisions and how will the aggrieved home-buyer be compensated due to intentional or negligent statements made to the homebuyer by the unlicensed salesperson?

*Atch. D*

Let me examine first who will be held accountable in the instance of fraud or intentional misrepresentation by an unlicensed salesperson when he makes such misrepresentations to the home-buyer. The Homebuilders would have you believe that the tried and true method of civil court action is the best and most convenient action the aggrieved home-buyer can have against the unlicensed salesperson and his developer. This is simply not the case. As a matter of fact, it derogates the built in features of the license law.

The license law allows a damaged home-buyer several quick, inexpensive methods for relief. First, the Real Estate Commission has control of a real estate recovery fund in the event that an insolvent, licensed broker makes a mis-statement to a home-buyer. The real estate recovery fund does not pay out damages to the home-buyer when an unlicensed employee makes a wrongful statement. Second, the 5 members of the Kansas Real Estate Commission have the power, provided for them in the license law, to revoke, suspend, or otherwise terminate a license of a licensed salesperson. It is obvious the commission would have no power to protect the public in this regard when dealing with an unlicensed salesperson.

My second point involves how the Kansas Real Estate Commission will enforce this new language and where they will be allowed to draw the line if and when the salesperson steps over the boundaries provided in the newly proposed language. As was mentioned above, the Commission will not be able to punish an unlicensed salesperson if he violates the provisions of the license law. Since there is no recourse in this regard, what is to stop the unlicensed employee from entering into a sales transaction with a home-buyer? Also, the language found on lines 76 and 77 stating that the employee may "perform such other duties relating to any of the forgoing as may be needed" is very vague and could allow for a broad scope of activities in which the unknowledgeable, unlicensed salesperson has no expertise.

My last point I would like to make involves compensation. We agree with the Kansas Real Estate Commission that occasional sales help offered by a foreman or carpet-layer who is not and will not be compensated for selling homes or acting in the capacity of a tour-guide through a new home. It is these occasional sales, mainly through "mom and pop" operations that we have no problem with.

The REALTORS of Kansas have a problem with an unlicensed individual hired for the sole purpose of trying to influence a sale. If they are hired for this primary purpose, the employee will not have the proper training or expertise in the real property industry to adequately make statements concerning the property. Members of the Committee, this is why the license law was initially enacted--to help protect the public from unknowledgeable and sometimes unscrupulous salespeople.

In short, the license law has worked well for the industry in the past. It provides ready, needed protection to the public and helps to insure the public that they are dealing with professionals in the industry. The proposed amendments offered to you today by the Homebuilder's Association of Kansas will only dilute an otherwise effective license law.



March 26, 1984

Mr. Robert H. Miller, Chairman  
House Federal and State Affairs Committee  
Room 112-S  
Capitol Building

STATE OF KANSAS

**KANSAS  
REAL ESTATE  
COMMISSION**

PHONE: (913) 296-3411  
217 East Fourth  
TOPEKA, KANSAS 66603

Dear Representative Miller:

RE: H.B. 3117

Mr. Chairman, members of the committee, I am Paul Flower, Director of the Real Estate Commission.

First, H.B. 3117 is not a bill providing for the exemption of homebuilders. It is a bill to provide an exemption from the License Act for employees of homebuilders. A homebuilder may sell his own property regardless of the financial structure of his business. This is provided for by K.S.A. 58-3037 (a) if the business is a proprietorship or partnership; (j) if the business is a corporation.

Second, the question is to what limit may an employee of a homebuilder show the property. If the employee is not compensated for showing the home then the commission does not consider the employee to be under the scope of the License Act. K.S.A. 58-3035 (c) requires the person to be compensated before the activity falls under the jurisdiction of the License Act. The employee, if basically compensated to perform activities related to building the home, could do the following activities so long as the employee was not compensated additionally for the following activities.

1. Escort a prospect who arrives at the property and expresses an interest in the property.

2. Give a prospect who arrives at the property any written information pertaining to the property, provided that such written information contains a statement that it was prepared or authorized by the person, partnership, association or corporation who constructed such home, and point out where certain information may be found therein. If a question arises that cannot be answered from such written information, the employee shall inform the prospect to whom the question may be addressed. The employee shall not make statements concerning the terms and conditions of sale or any other factual representations concerning the property, other than information contained in the prepared statement.

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Rep. Miller  
March 26, 1984  
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3. An unlicensed employee, who does not qualify for exemption under K.S.A. 58-3037 (a) or (j), may not negotiate a contract of sale, arrange any terms of financing other than those stated in the printed material prepared by the homebuilder, or give estimates of trade-in values related to the prospect's property.

This concept is in keeping with the commission's understanding of the law as announced by the Attorney General. You and I, as individuals, can sell our own property. You and I, as individuals, cannot compensate an unlicensed person to sell our property for us. You and I, as individuals, can expect an employee to assist us in selling our own property within the limits of that information or directions which we, as owners, prepare for the employee.

The homebuilders differ from the S & L's, for example. An employee of the S & L currently can sell those repossessions acquired in the normal course of business. In those cases the sale of the property is not a primary activity of the S & L. The sale of homes, not previously occupied, is the expected end result of new home building.

The commission feels the present law and regulations are adequate and do not need modification.

The commission does oppose H.B. 3117.

Respectfully yours,

  
J. Paul Flower, Director  
Real Estate Commission



# House Concurrent Resolution No. 5082

By Peterson, Cloud, Cribbs, Crowell, Dillon, Fox, Green, M. Johnson, Justice, Littlejohn, Love, Rolfs, Schweiker, Shriver, Spaniol, Sutter and Wisdom

2-16

0018 A PROPOSITION to amend the constitution of the state of  
0019 Kansas by adding a new section thereto authorizing ~~the legis-~~  
0020 ~~lature to permit, regulate, license and tax horse racing by bona~~  
0021 ~~fide nonprofit organizations and parimutuel wagering thereon~~  
0022 ~~and to provide for county option thereon.~~

parimutuel wagering in the state

0023 *Be it resolved by the Legislature of the State of Kansas, two-*  
0024 *thirds of the members elected to the House of Representatives*  
0025 *and two-thirds of the members elected to the Senate concur-*  
0026 *ring therein:*

0027 Section 1. The following proposition to amend the constitu-  
0028 tion of the state of Kansas shall be submitted to the qualified  
0029 electors of the state for their approval or rejection: ~~Article 15 of~~  
0030 the constitution of the state of Kansas is amended by adding a  
0031 new section thereto to read as follows:

On and after July 1, 1985,

0032 "§ 3b. ~~Regulation, licensing and taxation of horse racing~~  
0033 ~~and parimutuel wagering thereon; disbursal of revenue there-~~  
0034 ~~from.~~ Notwithstanding the provisions of section 3 of article 15  
0035 of the constitution of the state of Kansas, ~~the legislature may~~  
0036 ~~permit, regulate, license and tax the operation or conduct, by~~  
0037 ~~bona fide nonprofit organizations, of horse racing and parimu-~~  
0038 ~~tuel wagering thereon in any county in which the qualified~~  
0039 ~~electors of the county have determined, by a majority vote of~~  
0040 ~~those voting thereon, to permit such racing and wagering~~  
0041 ~~within the boundaries of the county."~~

Parimutuel wagering

0042 Sec. 2. The following statement shall be printed on the bal-  
0043 lot with the amendment as a whole:

parimutuel wagering is authorized in this state, except  
in those areas in which the legislature provides for the  
prohibition of such wagering

0044 "Explanatory statement. This proposed amendment  
0045 would authorize ~~the legislature to permit, license, regulate and~~

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0046 ~~tax horse races and parimutuel wagering on horse races, con-~~  
 0047 ~~ducted by nonprofit organizations, in any county where the~~  
 0048 ~~voters have approved the conduct of the races and wagering in~~  
 0049 ~~their county.~~

0050 "A vote for the proposed amendment would permit horse  
 0051 racing with parimutuel wagering in any county where the  
 0052 voters approve the conduct of the races and wagering in their  
 0053 county.

0054 "A vote against the proposed amendment would continue  
 0055 the current prohibition against parimutuel wagering on horse  
 0056 races."

0057 Sec. 3. This resolution, if concurred in by two-thirds of the  
 0058 members elected to the house of representatives and two-thirds  
 0059 of the members elected to the senate, shall be entered on the  
 0060 journals, together with the yeas and nays. The secretary of state  
 0061 shall cause this resolution to be published as provided by law  
 0062 and shall cause the proposed amendment to be submitted to the  
 0063 electors of the state at the state general election in the year 1984  
 0064 as provided by law unless a special election is called at a sooner  
 0065 date by concurrent resolution of the legislature, in which case it  
 0066 shall be submitted to the qualified electors of the state at the  
 0067 special election.

parimutuel wagering in the state

in the state