

Approved 1/31/84
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m. ~~p.m.~~ on January 30, 1984 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present: Russell Mills, Legislative Research
Fred Carman, Assistant Revisor of Statutes
Emalene Correll, Legislative Research
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee: Janet J. Stubbs, Home Builders Association of Kansas, Topeka
Joe Pashman, Home Builders Association of Kansas, Topeka
Donald M. Wood, Home Builders Association of Kansas, Wichita
Todd Sherlock, Kansas Association of Realtors, Topeka
Paul Flower, Kansas Real Estate Commission
Robert A. West, National Electrical Contractors Assn., Topeka

SB531 - Home builders' exemption from real estate brokers' and salespersons' licensure.

The Chairman introduced Janet Stubbs who stated that their organization had agreed to draft legislation at the request of the Committee on Federal and State Affairs, legislation which would be more clear than that last year in SB264, thus the introduction of SB531. She stated that she had two members of the Home Builders' Association present with her to testify as proponents of the bill.

Chairman Reilly recognized Joe Pashman, who testified as a proponent of the bill. His prepared statement is a part of these Minutes. (Attachment #1) He entertained questions from the Committee following his presentation. He quoted from his statement: we need to decide who the law is written for, the consumer or the real estate brokers.

Don Wood, also a proponent of the proposed legislation, appeared next. He is both a builder and a broker and is President of a C.S.I. of Kansas, a Wichita firm which builds tract homes in the Wichita area. He is also Vice-Director of the National Home Owners. A copy of his remarks attached as a part of these Minutes. (Attachment #2)

Janet Stubbs commented that she had just received information concerning a court case which had been handed down from Florida, and, which she had been told, was similar to present Kansas' law and which was found to be un-constitutional. She will provide copies for the Committee.

The Chairman introduced the opponents of the bill next. First to appear was Todd Sherlock. He presented a statement and was receptive to questions from the Committee. In summary he said that the license law was written to protect the public and that the Kansas Association of Realtors exists primarily as a watchdog for the industry. The Association feels that the profession and the public will not benefit from a relaxation in the license law. (Attachment #3)

Paul Flower read a prepared statement from M.W. "Bill" Perry III, who was unable to appear today as an opponent of the bill. Copy of the letter is attached hereto. (Attachment #4) Mr. Flower also referred to an Attorney General's Opinion, 81-207, dated September 1, 1981, which concerns an individual who is employed to act as a "tour guide" for a developer. This had been requested by the Real Estate Commission to define for them the nomenclature "tour guide". (Attachment #5.)

There were no other conferees appearing on SB531.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m./~~pm~~ on January 30, 1984

The Chairman introduced Robert A. West, who appeared to ask the committee to introduce a bill which would establish statewide electrical licensing. Mr. West's prepared statement is a part of these Minutes. (Attachment #6) Senator Francisco moved that the proposed legislation be introduced as a Committee bill. 2d by Senator Daniels. Motion carried.

The meeting adjourned at noon.

1/30/84
Attachment #1

TESTIMONY BEFORE
SENATE FEDERAL AND STATE AFFIARS COMMITTEE
JANUARY 30, 1984
BY
JOE PASHMAN
FOR
HOME BUILDER ASSOCIATION OF KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

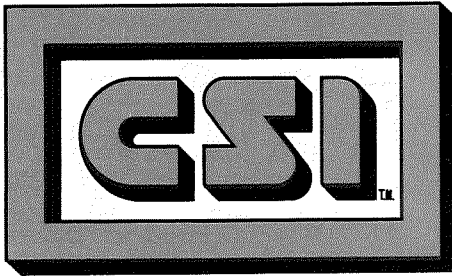
MY NAME IS JOE PASHMAN, I AM THE VICE PRESIDENT AND LEGISLATIVE CHAIRMAN OF THE HOME BUILDERS ASSOCIATION OF KANSAS. I PRACTICE MY PROFESSION OF HOME BUILDING HERE IN TOPEKA. I AM ALSO A LICENSED REAL ESTATE SALES ASSOCIATE. I WOULD LIKE TO SPEAK WITH YOU TODAY ABOUT THE PROPOSED CHANGE IN THE KANSAS LAW PERTAINING TO HOME BUILDER'S EMPLOYEES SELLING THEIR EMPLOYERS HOMES.

AS THE LAW IS NOW WRITTEN, I AS A HOME BUILDER HAVE THE RIGHT TO SELL MY OWN HOMES. HOWEVER, MY EMPLOYEES, WHO WORK WITH MY HOMES ON A DAILY BASIS, CANNOT SELL THEM UNLESS THEY OWN 5% OF THE STOCK IN MY COMPANY. THIS MAY IN FACT BE THE MOST IMPORTANT POINT ABOUT THIS WHOLE ISSUE. ONE MUST DECIDE WHY WE ARE RESTRICTING WHO MAY SELL REAL ESTATE. IF THE ANSWER TO THAT QUESTION IS FOR THE PROTECTION OF THE CONSUMER, THEN I CAN ASSURE YOU FROM MY PAST EXPERIENCES, AS BOTH A BUILDER AND A LICENSED REAL ESTATE SALES ASSOCIATE, THE CONSUMER WILL NOT BE ANY WORSE SERVED BY MY EMPLOYEES HANDLING A SALES TRANSACTION THAN BY A LICENSED AGENT. IN FACT, IN MOST CASES, THE CONSUMER WILL BE BETTER SERVED BY MY EMPLOYEE, WHO IS MUCH MORE KNOWLEDGEABLE ABOUT MY PRODUCT THAN MOST LICENSED REAL ESTATE AGENTS.

AT THIS POINT, IT'S IMPORTANT TO POINT OUT THAT THE SALE OF NEW HOMES AND EXISTING HOMES ARE ALMOST TWO DIFFERENT PROFESSIONS. MOST LICENSED REAL ESTATE AGENTS BUSINESS IS DONE

IN THE EXISTING HOME MARKET WHICH REPRESENTS ABOUT 90% OF THE BUSINESS CONDUCTED IN THE RESIDENTIAL REAL ESTATE MARKET. WITH ONLY ABOUT 10% OF THE MARKET IN REAL ESTATE SALES BEING IN NEW CONSTRUCTION. MOST LICENSED REAL ESTATE AGENTS DON'T EDUCATE THEMSELVES ENOUGH TO BE ABLE TO DO AS GOOD A JOB EXPLAINING MY PRODUCT TO A CONSUMER AS MY EMPLOYEES. MOST BROKERS REALIZE THIS, AND IT HAS BEEN MY PAST EXPERIENCE, THEY DON'T MIND IF ONE OF MY EMPLOYEES HOLDS AN OPEN HOUSE AS LONG AS THEY RECEIVE THEIR COMMISSION, IF THE HOME SELLS. BUT, IF AN EMPLOYEE SHOULD HOLD AN OPEN HOUSE WITHOUT THE HOME BEING LISTED, THEN I MAY GET REMINDED THAT MY EMPLOYEES NEED A LICENSE TO SELL REAL ESTATE.

So, we need to decide who the law is written for, the consumer or the real estate brokers. We need to decide who will best serve the consumer's needs, a licensed agent, who may work in new construction 10% of the time, or more probably not at all, or my employee, who is employed in the new construction field and works with it every day.



Judy: This was the testimony which held up our FSA Minutes of January 30, 1984. Thanks. In Ed's mail - JW this morning. 1/14/85

Senator Ed Riley
Room 254 East
State House
Topeka, Kansas 66612

December 19, 1984

Dear Sir,

The following is a brief synopsis of my statement before your committee on January 30, 1984.

My name is Don Wood and I am president of CSI of KANSAS, a large Wichita based homebuilder. We build approximately 125 homes per year and have our own commissioned sales force of eight. Because of the current Kansas Real Estate laws, I am a licensed Real Estate Broker and all of our sales personnel are licensed Realtor associates.

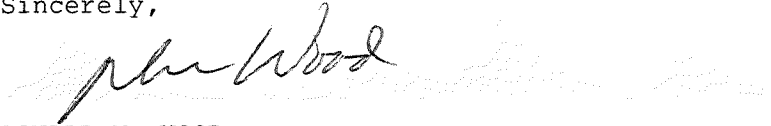
I oppose the requirement for builders who employ, either on salary or commission, their own sales force to represent them in the sales of the builders new home product exclusively, to be licensed as Realtor by the State of Kansas.

In the case of a builder or builder representative selling their product to the public, it is a two party transaction between the builder and the buyer. In the case of the normal Real Estate function it is between a buyer, realtor, and seller making it a three party transaction. A two party transaction between buyer and seller has no funds held in trust, has no third party representations, and is covered by a multitude of state statues. In a three party transaction the buyer is represented to the seller by a third party, funds are held in Trust and many representatives are made thru a third party. I feel that type of transaction needs to be regulated and is by the Kansas Real Estate Laws. In the end, the requirement for Real Estate licensing for homebuilders representatives serves no legal or protective purpose and becomes an extra expense to the buyer, forcing builders to pay higher Real Estate fees to licensed sales people.

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1/30/84
FSA

I encourage you to consider allowing builder representatives, whether salaried or commissioned, to sell the builders product without the burden of a Kansas Real Estate license.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald M. Wood". The signature is written in dark ink and is positioned above the typed name.

DONALD M. WOOD
PRESIDENT

Attachment #3
1/30/84 JW



KANSAS ASSOCIATION OF REALTORS®

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

SENATE 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 the revised language proposed for KSA 58-3037 (j) and KSA 58-3062 (c). We feel this language is a derogation of the license law enacted by this state legislature. If Senate Bill 531 becomes law, unlicensed individuals will be able to sell real property for an employer. We are convinced this is not the intent of the Real Estate Broker's and Salesperson's license Act.

The purpose behind the License Law is to protect the public from, at the very least, unknowledgeable sellers of real estate. This state legislature has seen fit to license individuals in many professions in order that the public has the best assurance these individuals will be competent in the profession they serve. The proposed changes in Senate Bill 531 will ultimately allow for very unskilled real estate agents in a profession which can be very complex and confusing.

The opportunities to obtain a license to sell real estate in the state of Kansas are very numerous. Many proprietary schools exist in the state and an exam is scheduled monthly in several locations over the state for the convenience of those who wish to sell real estate. Since the opportunities to enter the profession provide relatively little hinderance to most individuals, the law should not be diluted to allow individuals with little or no preparation to sell real property.

-CONT.-

ATTACHMENT 3 1/30/84

In summary, the License Law was written to protect the public. Our Association exists primarily as a watchdog for the industry in which our members subscribe to a strict code of ethics. We fear the real estate profession will not benefit from a relaxation from this license law, but conversely, the public will be on the losing end of this proposition.

The Kansas Association of REALTORS urges this Committee to kill Senate Bill 531.

1/30/84
Attachment #4

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JAN 26 1984

KANS. REAL ESTATE COM.M.



January 24, 1984

STATE OF KANSAS

**KANSAS
REAL ESTATE
COMMISSION**

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

COMMISSIONERS:

IGNATIUS "ICKIE" KISNER

1ST CONGRESSIONAL DISTRICT
STAFFORD

DORA J. "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

Senator Edward F. Reilly, Chairperson
Senate Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66612

Dear Senator Reilly:

As a member of the Kansas Real Estate Commission, I would like to express my concern about a bill introduced in the Senate Federal and State Affairs Committee. Senate Bill 531 proposes to amend K.S.A. 58-3037(j), the "builder's exemption" to exempt both home builders and their employees from the requirements of the Real Estate Brokers and Salespersons License Act when selling newly constructed homes. I am strongly opposed to this bill for the reasons stated below.

Under the current law, an individual home builder is exempted from the licensing requirements of the law with respect to properties owned by such builders by K.S.A. 58-3037(a) just as is any other individual dealing in their own properties. Further, existing Section 58-3037(j) preserves this exemption for the builder who elects to incorporate or enter into a partnership or association. However, an employee of such a builder is not exempted from the License Act unless the employee owns 5% or more of the stock of a corporate builder. Without this 5% provision, the individual builder who elected to incorporate for business purposes would become an employee of the corporation and would be punished by the loss of the exemption. Such a result was perceived to be unfair to the builder when the only real change in the business was in the legal structure.

The proposed bill would extend the "builder's exemption" to all of the builder's employees, whether the builder was operating as a sole proprietorship, partnership or corporation. Under the proposal, spouses, secretaries, foremen or any other individuals employed by the builder for any purpose would be exempted from the requirements of the License Act. Builders would be free to hire unlicensed, full time salespersons for the purpose of marketing their properties and compensate these individuals for their sales activities. No other class of persons has been granted such a comprehensive exemption from the License Act.

The presumed purpose of the Real Estate Brokers and Salespersons License Act is to protect the public by regulating individuals dealing in the rather complex area

of real property sales and leasing. The legislature has steadfastly protected the individual's right to buy, sell or lease his or her own property. This protection has been extended to builders for properties which they construct even though the builders are engaged in the real estate business as a vocation. To further extend the exemption to the builders' employees would create a potentially large class of individuals who could receive compensation for performing many of the traditional functions of real estate salespersons but who would not be required to meet the minimum licensure standards established by the law. Indeed it would be possible for an individual to take and fail the real estate salesperson's license exam several times and then go to work for a builder doing the very things they had been unable to obtain a license to do.

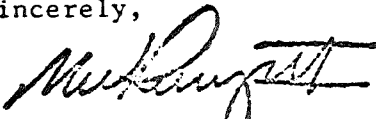
The age, educational and knowledge requirements established by the License Act are designed to help insure that those persons dealing with the public in the sale or leasing of real estate are at least minimally qualified to do so. To create a class of persons exempt from these requirements without an expectation that they will otherwise be qualified is not in the best interests of the citizens of Kansas.

The License Act also protects the public by establishing and maintaining a real estate recovery fund from which persons suffering monetary damages in a real estate transaction may seek reimbursement. However, reimbursement from the fund is limited to damages sustained by reason of certain acts committed by brokers or salespersons licensed under the Act or by any unlicensed employee of such broker or salesperson. Where neither the builder nor the salesperson are licensed, no recovery could be had.

In the "Mom and Pop" type examples which will not doubt be cited by the proponents of the bill, it admittedly appears that little harm could result from the proposed exemption. However, the builders clearly want to be able to pay compensation to employees for selling their newly constructed homes. Without strict limitations, which have to my knowledge not been proposed, the door is left wide open for large corporate construction and/or development companies to hire full time unlicensed, unregulated sales staffs to market large numbers of newly constructed homes across Kansas.

In summary, the standards set by the Real Estate Brokers and Salespersons License Act have done a great deal to promote and insure improvement in the quality of existing and future real estate brokers and salespersons. There is no reason that we should not expect and require the same qualifications from persons dealing in the sale of newly constructed homes as we do in the resale business. Senate Bill 531 represents a step backward from the consistent high quality which we seek to achieve.

Sincerely,



M. W. Perry, III

MWP:dkt

cc: ✓ J. Paul Flower, Director
Kansas Real Estate Commission

Kansas Real Estate Commissioners



1-30-84
Attachment #5
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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.

* * *

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."

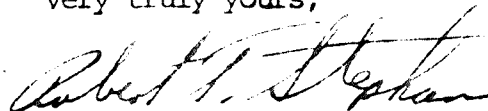
~~It is our~~ understanding that, in the situation at hand, the "tour guide" will assist the developer, or the licensed real estate broker retained by the developer, by escorting a prospect who arrives at the property and expresses an interest in viewing lots and amenities being offered. The tour guide 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.

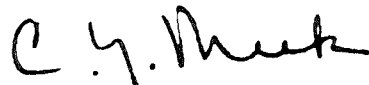
In determining whether 58-3035(c)(8) applies to the tour guide's stated activities, we must ascertain and give effect to the intent of the legislature, as expressed by the language of the statute. Randall v. Seemann, 228 Kan. 395, 397 (1981), and cases cited therein. The terms "procuring" and "prospects" 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.

1/30/84 JW
Attachment #6

SENATE FEDERAL & STATE

AFFAIRS COMMITTEE

JANUARY 30, 1984

BY

ROBERT A. WEST

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Mr. Chairman and members of the Committee:

My name is Bob West, and I represent the members of the Kansas Chapters, National Electrical Contractors Association. My appearance before you today is to request your consideration to introduce, as a Committee, a bill which will establish statewide electrical licensing.

The concept of electrical licensing is certainly not a novel idea. Our member electrical contractors and the electricians they employ currently are licensed through local entities - both cities and counties. Approximately 95% of the cities in the state of Kansas with a population of 6000 or more have very comprehensive licensing procedures. Three of our bordering states have licensing procedures: these include Nebraska, Oklahoma and Colorado. Forty-one out of the fifty states have electrical licensing requirements.

The greatest validity for the licesning of those persons engaged in the business of electrical construction and the installation of electrical equipment is, of course, the concern for the safe installation of a potentially dangerous source of power: electricity. That concern is covered for the majority of our citizens in Kansas through the substantial number of local licensing programs which are currently in place.

The purpose of a statewide program would be to bring cohesiveness and singularity to these various licensing entities, creating one licensing authority in Kansas. This would accomplish two objectives: it would uphold the value of insuring that electrical work will be done by qualified persons, and secondly, only one licensing authority established in the state, regulation and costs should be reduced considerably. Many of our member electrical contractors currently hold 5-10-15 or more local licenses across the state. Obtaining and keeping these licenses is costly. The same holds true for the electricians working for these contractors. A single, statewide license should, therefore, significantly reduce the fees and administrative work entailed in procuring ones license.

Your favorable consideration to this request for the introduction of legislation establishing electrical licensing will be most appreciated. Our industry has a wide base of support for this concept. Electrical Contractors both large and small, electricians, city building officials, and the state association of electrical inspectors have all shown support for this concept. This is not an attempt to erect large fences around the electrical industry in this state. Rather, it is an attempt to remove some of those fences while at the same time continuing to maintain a consistent approach to the licensing of those engaged in electrical work.

Thank you for your consideration and attentiveness.