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STATE OF NEBRASKA
OFFICIAL
JUL 11 1994
DEPT. OF JUSTICE

DATE: July 7, 1994

SUBJECT: Exemptions Under the Real Estate Appraiser Act

REQUESTED BY: Marilyn Hasselbalch, Director
Nebraska Real Estate Appraiser Board

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

Neb. Rev. Stat. § 76-2221(1) (1994 Neb. Laws, LB 1107, § 17) provides that the Real Estate Appraiser Act ("Act") does not apply to any real estate appraiser employed by the following:

> (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, industrial loan and investment company, or small loan company licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who also practices as an independent real estate appraiser for others shall be subject to the act and shall be registered, licensed, or certified prior to engaging in such other appraising;

(Emphasis added).

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Another exemption is found at Neb. Rev. Stat. § 76-2221(2) which states that the Act does not apply to someone who:

> in the ordinary course of his or her business, gives an opinion as to the price of real estate for the purpose of a prospective listing or sale, except that such opinion as to the listing price or the sale price shall not be referred to as an appraisal. No compensation fee, or other consideration shall be charged for such opinion other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved;

You have requested our opinion regarding interpretation of these two statutory provisions. Specifically, you have asked whether a person who falls within one of the exempted categories, yet has chosen to become certified, licensed or registered under the Act, must then comply with the generally accepted standards of professional appraisal practice in performing his regular job. The question arises, in part, because Neb. Rev. Stat. § 76-2237 (1994 Neb. Laws, LB 1107 § 38) states that each registered, licensed, or certified real estate appraiser must comply with the standards of professional appraisal practice adopted by the Board. The Board has adopted the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Foundation. 298 NAC 2.

You have provided two examples for our consideration. The first fact pattern you describe concerns an employee of a state agency who is asked by the agency head to give an opinion of land value without performing a complete appraisal which meets the standards set forth in USPAP. Although the state employee is not required to become a licensed real estate appraiser in order to perform his state job, he has chosen to do so. You ask whether he must then comply with USPAP in performing his job duties at the state agency. Based on the following analysis, we conclude that the employee you describe is not required to comply with USPAP when performing his job duties at the state agency. The employee would, of course, be required to comply with the standards of professional appraisal practice when engaged in independent appraisal practice for others.

In the absence of anything indicating to the contrary, statutory language should be given its plain and ordinary meaning. If possible, one must discover legislative intent from the language of the statute itself. ***In Re Interest of Powers***, 242 Neb. 19, 493 N.W.2d 166 (1992); ***State v. Stein***, 241 Neb. 225, 486 N.W.2d 921 (1992). A second rule of statutory construction provides that

statutes relating to the same subject matter are in pari materia and should be construed together. In other words, all parts of an act relating to the same subject should be considered together, not separately. ***Hollstein v. First National Bank of Aurora***, 231 Neb. 711, 437 N.W.2d 512 (1989); ***State v. Jennings***, 195 Neb. 434, 238 N.W.2d 477 (1976). Here, the language of Neb. Rev. Stat. § 76-2221(1) seems to indicate an intent to exempt certain appraisers from the Act when they are engaged in work for particular employers, but not when they are engaged in independent appraisal work for others. Yet, taking into consideration Neb. Rev. Stat. § 76-2237, which states that each licensed real estate appraiser must comply with certain standards of practice, it is our opinion that some ambiguity is created and construction of the statute is appropriate. When a statute is ambiguous, one may determine legislative intent by examining the legislative history. ***Pump & Pantry, Inc. v. City of Grand Island***, 233 Neb. 191, 444 N.W.2d 312 (1989).

Nebraska has licensed real estate appraisers since 1974. Neb. Rev. Stat. § 81-8,277 provided exemptions from the 1973 licensing act. The exemptions included employees of the federal government, certain banks and financial institutions, and state and local agencies dealing with appraisals. The current Real Estate Appraiser Act was created in 1990 to comply with provisions of federal law concerning appraisals performed in connection with federally related transactions. The exemptions relating to government employees were retained when the current Real Estate Appraiser Act was enacted in 1990. The legislative histories of 1990 Neb. Laws LB 1153, § 21 and 1991 Neb. Laws LB 203, § 22 reveal some discussion concerning elimination of the exemptions. However, the exemptions remain in the new Act. As the current exemptions are seen as a continuation of the pre-1990 exemptions, we have also reviewed the legislative history of the 1973 Act.

Appearing for LB 86 before the Committee on Banking, Commerce and Insurance was Roscoe E. Story who supported an amendment to exclude certain government employees from the Act, stating that in the Act, "they're talking about a person who is primarily in the appraisal business as an appraiser." Committee Records on LB 86, 83rd Neb. Leg., 1st Sess. 45-46 (Jan. 23, 1973). In the floor debate on LB 86, the bill's introducer, Senator Duis, asked for the adoption of an amendment "to clear up any misunderstanding" and to allow state agencies to use their appraisers without the necessity of having a license fee paid. He stated that, "the Tax Commissioner desired to be able to use their appraisers for their particular purposes without being covered under the act." Floor Debate on LB 86, 83rd Neb. Leg., 1st Sess. 1910-1911 (March 26, 1973).

One might wish that the legislative history of § 76-2221 and its predecessor § 81-8,277 more clearly demonstrated the Legislature's intent. It is our opinion that the legislative history supports our interpretation that employees of certain employers are exempted so that they can perform certain activities for that employer without being covered by the Act. Therefore, we conclude that the state employee described in your first example, who is asked by his employer to provide an opinion on land value without performing a complete appraisal, may perform that activity without being subject to the Act. If that employee also practices as an independent real estate appraiser for others, he is subject to the Act when engaging in that other appraising work.

The second example you have provided for our consideration is that of a real estate salesperson who is asked by her employing broker to prepare a market analysis for the purpose of a prospective listing. You state that the broker is requesting an opinion of the value of real estate, but is asking the salesperson to do something less than a complete appraisal. You further state that the salesperson in question has chosen to become a licensed appraiser. You ask whether the salesperson must comply with the higher standards required of a licensed appraiser when preparing her market analysis. We conclude that the real estate salesperson, although she has also chosen to become a licensed appraiser, is exempted from the standards of professional appraisal practice when furnishing an opinion as to a listing price.

We find that the language of Neb. Rev. Stat. § 76-2221(2) is clear and unambiguous. It specifically exempts from the reach of the Real Estate Appraiser Act and the corresponding regulations a person who "in the ordinary course of his or her business, gives an opinion as to the price of real estate for the purpose of a prospective listing or sale. . . . " This subsection also provides that the opinion as to the listing or sale price may not be referred to as an appraisal and no separate fee can be charged for that opinion. There is no statutory exception to this exemption as appears in subsection (1).

As long as the salesperson is performing work "in the ordinary course of his or her business" as a real estate salesperson preparing a market analysis for the purpose of the listing or sale of real estate, she need not comply with USPAP. The Legislature has clearly exempted this type of work activity from the reach of the Act. We note that the real estate salesperson in your example would not be exempt as to work not performed in the ordinary course

of her business as a real estate salesperson. Any outside work for which she charges a fee will need to comply with the standards of professional appraisal practice.

Sincerely,

DON STENBERG
Attorney General

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Assistant Attorney General

Approved By:

Attorney General

9-218-6.22