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December 19, 2011

ATTORNEY GENERAL OPINION NO. 2011- 20

Jeff Barnes, Secretary
Home Inspector Registration Board
2915 S.W. Wanamaker Rd., Suite 100
Topeka, KS 66614

Re: Personal and Real Property—Home Inspectors—Authority to Deny,
Suspend or Revoke Registration

Synopsis: A registered home inspector or an applicant for home inspector registration may be subject to administrative action for offering or delivering any type of commission, referral fee or kickback for the referral of any business. Cited herein: K.S.A. 2010 Supp 58-4505

* * *

Dear Mr. Barnes:

As Secretary of the Kansas Home Inspector Registration Board (HIRB), you ask whether K.S.A. 2010 Supp. 58-4505(a)(4)(B) prohibits home inspectors from offering a referral fee to realtors or clients who refer business to the inspector. This statute states in relevant part:

(a) ...the board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

...

(4) performing any of the following acts as part of the home inspection:

...

(B) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector.

In your letter, you state that the drafters of this statute intended to prohibit only “kickbacks” paid by home inspectors to induce other persons to engage in fraud or collusion. You further state that this statute was not intended to prevent the use of traditional incentive marketing techniques, such as paying a fee to a realtor for referring a client to the home inspector.

The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.¹ The legislature is presumed to have expressed its intent through the language of the statute.² When the language of a statute is plain and unambiguous, appellate courts will not speculate as to the legislative intent behind it and will not read the statute so as to add something not readily found in it.³

We note that the language of K.S.A. 2010 Supp. 58-4505(a)(4)(B) is plain and unambiguous; offering or delivering *any commission, referral fee or kickback* for the referral of any business to the home inspector is grounds for disciplinary action by the HIRB. The statute does not limit its applicability to commissions, referral fees or kickbacks offered for the purpose of fraud or collusion. Thus, we conclude that K.S.A. 2010 Supp. 58-4505(a)(4)(B) prohibits *any commission, referral fee or kickback* paid by a registered home inspector, or an applicant for home inspector registration, for the referral of business to such home inspector or applicant. If a registered home inspector or applicant engages in such conduct, the HIRB is authorized – but not required – to deny, suspend, revoke, or impose probationary conditions on such individual’s registration.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Attorney General

/s/Sarah Fertig

Sarah Fertig
Assistant Attorney General

DS:AA:SF:ke

¹ *Winnebago Tribe of Nebraska v. Kline*, 283 Kan. 64, 77 (2007).

² *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 607 (2009).

³ *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 378 (2001) (citing *In re Marriage of Killman*, 264 Kan. 33, 42–43, (1998)).