

N.D.A.G. Letter to Preszler (March 14, 1990)

March 14, 1990

Mr. Gary D. Preszler
Commissioner
Department of Banking and Financial Institutions
13th Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0080

Dear Mr. Preszler:

Thank you for your December 6, 1989, letter requesting my opinion as to whether N.D.C.C. ch. 13-05 requires a separate license for a "branch" location of a licensed collection agency. I apologize for the delay.

N.D.C.C. § 13-05-02 provides:

Except as otherwise herein provided, no person other than a collection agency licensed and authorized under this chapter shall advertise or solicit either in print, by letter, in person, or otherwise, the right to collect or receive payment of any claim for another or sell or give away collection letters as demand forms in the state of North Dakota. As used in this chapter, the term "collection agency" does not include attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of credit man upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court.

N.D.C.C. § 13-05-03 provides, in part, as follows:

Every application for collection agency license . . . shall contain the following information:

1. The full name and proposed business name of the applicant.
2. The address where the business is to be conducted.

(Emphasis supplied.) N.D.C.C. §§ 13-05-02, 13-05-03(1) and (2) indicate in a singular manner that each application shall include the "name" of each applicant and the business location. Consequently, it might appear that a "branch" location is required to obtain a separate license because the statute implies that only one business at one address may

apply at any one time. However, N.D.C.C. § 1-01-35 provides that "[w]ords used in the singular number include the plural and words used in the plural number include the singular, except when a contrary intention plainly appears."

I have reviewed the text and history of N.D.C.C. ch. 13-05 and there does not appear to be any indication that N.D.C.C. ch. 13-05 should be exempted from the canon of construction contained in N.D.C.C. § 1-01-35. As a result, N.D.C.C. §§ 13-05-02 and 13-05-03 require each "person[s]" application to contain the "address[es]", "name[s]" and business locations of the proposed business. Given this interpretation, neither by statute nor by regulation is it expressly required that a "branch" office must procure a separate license. Therefore, a "branch" office may be treated as an extension of the principle office and is not required to obtain a separate license.

My conclusion that a branch office need not obtain a separate license assumes that the "branch" office conducts its business at the direction and control of the principle office. In the event that the "branch" office operates independently with work or earnings obtaining to the benefit of the "branch" office, a separate license might be required. One significant, but not dispositive inquiry would be whether the branch and principle office keep separate records. In any event, determination of the issue requires fact findings beyond the purview of official opinions which, by statute, are limited to questions of law.

I hope that the above discussion sufficiently answered any questions you may have on this issue.

Sincerely,

Nicholas J. Spaeth

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