

**OPINION
70-284**

December 4, 1970 (OPINION)

Mr. Dennis D. Schulz

Secretary-Treasurer

N. D. Real Estate Commission

RE: Real Estate - Brokers Licenses

This is in response to your request for an opinion of this office with regard to the application of section 43-23-05 of the 1969 Supplement to the North Dakota Century Code.

You call our particular attention to that portion of the above cited statute providing that:

"REAL ESTATE LICENSE REQUIRED. * * * No copartnership, association, or corporation shall be granted a license, unless every member or officer of such copartnership, association, or corporation actually engaged as a real estate broker, real estate salesman, or mortgage broker as defined herein, shall hold a license as a real estate broker, and unless every employee who acts as a real estate salesman or mortgage broker for such copartnership, association, or corporation shall hold a license as a real estate salesman or mortgage broker."

You inform us that you are presently faced with a situation whereby a licensed real estate salesman employed by a real estate corporation has requested to become licensed as a broker for the firm. You indicate that the firm is presently managed by a licensed real estate broker who is a corporate officer in the firm. You indicate that the salesman has indicated that he has no intentions of becoming an officer in the corporation. Technically, it appears to you that under these circumstances we will still be performing the functions of a salesman even though he has requested licensing as a broker. You further indicate that it is noted that a real estate salesman and broker are two distinctly different occupations.

Your question is stated as whether a licensed real estate broker can be employed by a licensed real estate corporation and act in the capacity as a broker without becoming an officer or stockholder in the corporation.

We would assume that in the usual instance the purpose of such a statutory provision is to assure professional ability, capacity and ethics in those operating or strongly influencing the operations of a professional firm and to prevent actual unlicensed practice of the profession, by individuals, employed by or in control of professional firms. There is nothing in the terminology or purpose of this statutory provision indicating in any manner that same was intended to apply to the converse of the situation described in the statute.

We do note that the statutory chapter does have separate definitions

for "real estate broker" and "real estate salesman." From the facts you state it does seem possible to conclude that the functions that will be performed by this individual on behalf of the employer will be those described under subsection 2 of section 43-23-06 of the North Dakota Century Code prohibiting one individual from acting both as a real estate broker and as a real estate salesman. Also, we find nothing in the statute actually indicating that one real estate broker cannot work for or be employed by another real estate broker.

On such basis, it is our conclusion that a licensed real estate broker can be employed by a licensed real estate broker-corporation and act in the capacity of a broker without becoming an officer or stockholder in the corporation.

We trust the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General