

OPINION

69-213

February 24, 1969 (OPINION)

Mr. Donald R. Holloway

Securities Commissioner

State of North Dakota

RE: Mineral brokers - Registration - Agent or employee

You recently requested an opinion from this office in regard to the interpretation of various sections of Chapter 43-22 of the North Dakota Century Code. Your question is as follows:

Is an agent or employee of a registered oil, gas, or mineral broker required to be registered as an oil, gas, or mineral broker while performing the functions of such broker on behalf of his registered principal or employer?"

Section 43-22-01(1) of the North Dakota Century Code provides:

1. Oil, gas or mineral broker shall mean any person, copartnership, association or corporation engaged in the business of buying for resale leases, mineral rights, royalties, or other interests in oil or gas properties or in properties containing or presumed to contain uranium or other fissionable materials from the surface holder or landowner, whether for himself or as agent of others." (Emphasis supplied.)

It is our opinion that the emphasized portion of the above quoted definition pertains to agents of persons not registered as oil, gas, or mineral brokers. The language is necessary in order for one to not avoid the requirements of the Act by claiming to be the agent of another who is not registered as an oil, gas or mineral broker.

Section 43-22-05 of the North Dakota Century Code provides:

BOND COVERS AGENT. The bond or deposit furnished by an oil, gas or mineral broker shall cover the acts of his duly authorized employees or agents. Any such employee or agent need not furnish a separate bond but the burden of proof shall rest upon any person not himself bonded to establish that he was duly authorized by a bonded broker. An oil, gas or mineral broker registered under this chapter shall certify to the commissioner the names, business addresses and residence addresses of any regular employees or agents employed in the business of buying for resale oil and gas leases, mineral rights, royalties, or other interests in oil and gas properties from the surface holder or landowner, at the time of registration or renewal thereof and shall certify the names, business and residence addresses of any such employees or agents within ninety days of their employment by such oil, gas

or mineral broker."

The first sentence in the above quoted section provides that the bond covers the agents and employees of the broker.

The last sentence of the above quoted section provides, in substance that a registered oil, gas or mineral broker furnish names and addresses of all his agents and employees that are buying mineral rights for him. This shows a legislative intent that such agents and employees need not be separately registered as oil, gas or mineral brokers as the public is protected by the registered broker, who as principal or employer is required to be bonded, and if a non-resident must have filed a Consent to Service of Process as the Act provides in Section 43-22-07.

Therefore, the specific answer to your question is "no." The agent or employee of a registered oil, gas or mineral broker is not required to be separately registered as an oil, gas or mineral broker while acting within the scope of his agency or employment.

HELGI JOHANNESON

Attorney General