

**OPINION
74-317**

September 24, 1974 (OPINION)

Mr. Dean F. Bard
Special Assistant Attorney General
for the North Dakota
Real Estate Commission
P. O. Box 1874
Bismarck, ND 58505

Dear Mr. Bard:

This is in response to your correspondence of September 6, 1974, in which you state a question has arisen concerning the matter of granting a real estate brokers license to residents of North Dakota and South Dakota under a reciprocal agreement for the same. In this respect, you call our attention to section 43-23-10 of the North Dakota Century Code, as amended, which contains the following provisions:

"The commission shall recognize the license issued to a real estate broker or mortgage broker by another state as satisfactorily qualifying him for license as a broker, provided that said nonresident broker has qualified for license in his own state and also that said other state permits licenses to be issued to licensed brokers in this stage." (underlining added)

You observe that this appears to be a reciprocal statute with respect to the licensing of real estate and mortgage brokers and further advise that up until just recently North Dakota and South Dakota each granted real estate brokers licenses to the other state's resident brokers on a completely reciprocal basis, waiving all other examination and residency requirements. South Dakota, it appears, has now enacted new educational requirements before a license can be granted to its resident applicants. This provision exceeds the licensing requirements established by North Dakota for its resident applicants at the present time. On the basis of the new requirement, South Dakota has advised the North Dakota Real Estate Commission that it will no longer honor its end of the reciprocal agreement which permits North Dakota resident brokers to be automatically granted a license in South Dakota. The South Dakota Real Estate Commission has apparently also asked that North Dakota continue to honor its portion of the reciprocal agreement by continuing to grant North Dakota licenses to South Dakota resident brokers licensed by that state.

On the basis of this situation, you then asked whether the North Dakota Real Estate Commission can accede to the request made by South Dakota for the granting of licenses on a reciprocal basis to its resident brokers in view of the fact that South Dakota will not issue licenses on the same basis to North Dakota resident brokers.

In considering this question, we must first examine the pertinent portion of section 43-23-10 of the North Dakota Century Code, as amended, which is set out above. It is first observed that the underlined language is, as you state in your letter, reciprocal in

nature and is similar to many other like statutes found in the area of occupational and professional licensing boards which permit the licensees of one state to operate in another state providing that the same privilege is accorded the residents of the state granting the privilege.

As was stated in *Mercer v. Hemmings*, 194 So. 2d. 579 (Fla. 1966), at page 582:

"Reciprocity denotes mutuality, or the relationship existing between states when each gives citizens of (the) other certain favors or privileges that its own citizens enjoy at the hands of (the) other state . . . "

We must first determine whether section 43-23-10 is truly a reciprocal statute as that term is defined in the *Mercer* case. If it is, South Dakota's action in terminating its part of the relationship with North Dakota destroys the mutuality that such agreements contemplate.

Section 43-23-10 does not require that before a nonresident state can have the advantages of reciprocal licensing granted to its brokers, it must agree to license nonresident individuals without any qualification except that they hold a broker's license in their state of residency. The language expressly states that ". . . said other state permits licenses to be issued to licensed brokers in this state." It is true that the language requires only that the other state "permits" licenses to be issued; however, to say that South Dakota now fulfills its part of the reciprocal agreement because it "permits" North Dakota brokers to be granted a license provided that they fulfill certain other qualifications would seem to make this provision unnecessary and of little consequence since South Dakota, as well as other states, all "permit" the issuance of licenses to brokers in this state if they comply with the residency requirements, pass the licensing examination, and fulfill other requirements that such other state might have. In order to attain a natural and reasonable meaning, the language in question, as it applies to the situation at hand, must mean something more. It is our opinion that the meaning to be ascribed to this language is that North Dakota may grant licensing privileges to South Dakota resident brokers upon their application only as long as South Dakota will provide the same privilege for North Dakota brokers, without any qualifications additional to that of holding a North Dakota broker's license. To permit South Dakota or any other state to claim the benefit of such a reciprocal arrangement without granting the same privilege on an equal basis would destroy the very reciprocity upon which such an arrangement is predicated. As was said in *Bevis v. Eastland*, 186 So. 2d. 818 (Fla. 1966) at page 819:

"In short, the board has construed the reciprocal statute to mean that it authorizes the granting of a certificate to the applicant who was originally certified in another state, if that state would do likewise for a Florida resident who is in a similar situation. If such criterion is not met, the board is well within its discretionary power to refuse to grant the reciprocity . . . "

Such is the case here. The North Dakota Real Estate Commission is not in a position to grant the privilege of reciprocal licensing to South Dakota applicants holding broker's licenses from that state since there is in effect no longer any reciprocity on that state's part and no reciprocal agreement.

We trust this answers your inquiry.

Sincerely yours,

Allen I. Olson

Attorney General