

LETTER OPINION
95-L-219

September 19, 1995

Mr. Michael F. McMahon
Attorney at Law
P.O. Box 400
Bismarck, ND 58502-0400

Dear Mr. McMahon:

Thank you for your letter requesting that I review and rescind or modify the December 21, 1984, opinion issued by former Attorney General Robert O. Wefald to Dean F. Bard. That opinion provided that real estate salespersons may not count their continuing education hours towards fulfillment of the 90-hour broker prelicensing requirement.

N.D.C.C. § 43-23-08 provides the requirements for an individual to become a licensed salesperson or real estate broker. Pursuant to subsection 4 of that section, an applicant for a salesperson's license must have successfully completed at least thirty classroom hours in a course of study approved by the Commission. With regard to applicants for a broker's license, subsection 4 provides that the applicant must have successfully completed an additional sixty classroom hours in a course of study approved by the Commission. Based upon your letter it is my understanding that applicants for the salesperson's license typically meet the thirty-hour requirement by completing the GRI I course. Based upon your letter it is also my understanding that an applicant for a real estate broker's license typically completes the additional sixty hours of course study by successfully completing the GRI II and GRI III courses.

N.D.C.C. § 43-23-08.2 provides that every three years an applicant for renewal of a broker's or salesperson's license shall submit proof of participation in not less than twenty-four hours of approved continuing education. This section further provides that the Commission sets the standards for the approval of lectures, seminars, courses of instructions, and correspondence courses that qualify for satisfaction of this requirement.

You question whether a licensed salesperson can use the GRI II and GRI III courses to satisfy both the sixty hours required to sit for the broker license examination and the continuing education requirements.

Mr. Michael F. McMahon
September 19, 1995
Page 2

Neither N.D.C.C. § 43-23-08 nor N.D.C.C. § 43-23-08.2 address whether the same hours used to satisfy the salesperson's continuing education requirement can be used to satisfy the additional sixty hours required to sit for the broker license examination. In light of the fact that the Real Estate Commission is the administrative agency statutorily authorized to administer N.D.C.C. ch. 43-23, and in light of the fact that N.D.C.C. § 43-23-08.2 specifically provides that the Commission shall set standards for the approval of continuing education requirements, it is my opinion that the Commission can determine that the same hours used to satisfy a salesperson's continuing education requirements may be used to satisfy the additional sixty hours required for the salesperson to sit for the broker license examination if doing so would not be inconsistent with the purpose of chapter 43-23. See Trinity Medical Center v. N.D. Bd. of Nursing, 399 N.W.2d 835 (N.D. 1987).

The purpose of requiring an applicant for a broker's license to have successfully completed ninety classroom hours in a course of study approved by the Commission is to assure that the applicant has the requisite knowledge to properly perform the professional responsibilities of a broker. See generally State v. District Court in and for Burleigh County, 253 N.W. 744, 747 (N.D. 1984) (the purpose of a license examination is to ascertain competency). The fact that the same hours are used to satisfy other professional requirements, such as continuing education hours as a salesperson, will not change the fact that the applicant has received the requisite classroom training in order to properly function as a broker. Similarly, permitting a salesperson to use continuing education hours to satisfy the additional sixty hours required to sit for the broker license examination will not frustrate the purpose of requiring continuing education. As a general rule, continuing education is required to assure that a licensee remains competent to act in the licensee's profession. This purpose is satisfied even if a salesperson uses continuing education hours to satisfy other professional requirements, such as to become a licensed broker. Thus, permitting a salesperson to use continuing education hours to also satisfy the additional sixty hours required to sit for the broker license examination is not contrary to the plain language of or policy behind N.D.C.C. §§ 43-23-08 and 43-23-08.2.

Therefore, it is my opinion that the Real Estate Commission could determine that a salesperson may use continuing education hours to satisfy the additional sixty hours required for the salesperson to sit for the broker license examination since doing so would not be

Mr. Michael F. McMahon
September 19, 1995
Page 3

contrary to or inconsistent with the provisions of N.D.C.C. ch. 43-23. The December 21, 1984, opinion issued to Dean F. Bard is rescinded to the extent that it is inconsistent with this opinion.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dab/mh

