

LETTER OPINION
2000-L-160

November 13, 2000

Mr. David E. Reich
Special Assistant Attorney General
P.O. Box 400
Bismarck, ND 58502

Dear Mr. Reich:

Thank you for your letter on behalf of the North Dakota Real Estate Commission (the Commission) asking whether N.D.C.C. § 42-23-10 permits reciprocity with any of the provinces of Canada or with other foreign countries. N.D.C.C. § 43-23-10 provides in pertinent part as follows:

A nonresident broker regularly engaged in the real estate business as a vocation and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker by another state as satisfactorily qualifying him for license as a broker; provided, that the nonresident broker has qualified for license in his own state and also that the other state permits licenses to be issued to licensed brokers in this state. . . .

As you point out in your request letter, the language of the statute provides for reciprocity with other states, but does not mention reciprocity with foreign countries.

The use of the word "state" in the statute in context refers to the other states of the United States. See N.D.C.C. §§ 1-01-49(16), 1-02-02, 1-02-03. As the North Dakota Supreme Court explained in Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) "[g]enerally, the law is what the Legislature says, not what is unsaid." The statute in question is unambiguous and, therefore, it would be improper "to attempt to construe the provisions so as to legislate that which the words of the statute do not themselves provide." Peterson v. Heitkamp, 442 N.W.2d 219, 221 (N.D. 1989).

The Commission is an administrative agency. North Dakota Real Estate Commission v. Allen, 271 N.W.2d 593 (N.D. 1978). An agency only has such powers as have been conferred upon it by the Legislature or which are necessarily implied therefrom. MCI Telecommunications v. Heitkamp, 523 N.W.2d 548, 555 (N.D. 1994); First Bank of Buffalo v. Conrad, 350 N.W.2d 580, 584-85 (N.D. 1984).

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For the foregoing reasons, it is my opinion that N.D.C.C. § 42-23-10 does not permit reciprocity with any of the provinces of Canada or other foreign countries. If the Commission wants to be able to grant foreign countries reciprocity, authorizing legislation would need to be passed.

Sincerely,

Heidi Heitkamp
Attorney General

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