

**OPINION
67-10**

January 3, 1967 (OPINION)

Mr. Arne Dahl

Commissioner

Agriculture and Labor

RE: Agriculture - Livestock Dealers - Licenses

Your request for an opinion dated December 27, 1966, has been received by this office.

Question 1. "Must each individual named in a copartnership, association, or corporation, doing business as livestock and/or wool dealer be bonded and licensed, and each pay a fee of \$10.00, or will one license, one bond in the amount of \$5,000, and one \$10.00 fee be sufficient for each of the above categories?"

Section 36-04-01 of the North Dakota Century Code defines a dealer as any person, copartnership, association, or corporation engaged in buying and selling livestock. Therefore it is our opinion that one bond and one license will cover the copartnership, association, or corporation because each is a single legal entity. If, however, the copartnership, association, or corporation deals in livestock as well as wool and poultry, it must have a license for each commodity in which it deals as is required by section 36-04-07 of the North Dakota Century Code.

Question 2. "If only one license is required and issued to a copartnership, association, or corporation, must those individuals acting as dealers for the copartnership, association, or corporation (who are listed in the application for license as members or officers of the copartnership, association, or corporation) be designed as agents and so be licensed and bonded according to the statute?"

Dealer's agents must be registered as required by section 36-04-03 of the North Dakota Century Code which reads as follows:

DEALER'S LICENSE REQUIRED - AGENT LICENSED - LIABILITY OF OWNER FOR AGENT'S ACTS. All dealers shall be licensed as provided in this chapter. No agent shall act for any such dealer unless the dealer is licensed and has designated such agent to act in his behalf and has notified the dairy department of such appointment in his application for a license or in a separate written instrument and requested the dairy department to issue to such agent an agent's license. A dealer shall be accountable and responsible for all the acts of his agent."

It is our opinion that those individuals who are members of a copartnership and are acting as dealers for it must be registered as agents because every member of a partnership is both a principal and

an agent of that partnership. The above quoted section requires all agents of dealers to be licensed and registered by the dairy department.

A corporation must act through its officers and agents and if the individual is acting as an agent for the corporation, he must be registered and licensed as an agent of the corporate dealer. If, however, he is acting as an officer of the corporation and is dealing within the bounds of his authority, he is not an agent of the corporation and need not register or secure an agent's license. Whether an individual is acting as an officer or agent of the corporation is a question of fact which must be determined with each individual case.

A voluntary association which is organized under statutory authority is a legal entity and may appoint an agent dealer who must be registered and licensed in accordance with sections 36-04-03 and 36-04-07 of the North Dakota Century Code. The members of such an association are treated the same as members of an incorporated licensed dealer and the rules for such corporations previously set forth would be applicable.

An association which exists without statutory sanction would be treated as a partnership and each partner acting as a dealer must be registered and licensed as an agent.

Question 3. "If a copartnership, association, or corporation designates individuals (who are not members of the copartnership, association, or corporation) to do buying for the copartnership, association, or corporation, must they be licensed and bonded as agents?"

It is our opinion that nonmembers of the copartnership, association, or corporation who are designated to do buying for a copartnership, association, or corporation must be registered and licensed as agents of the licensed dealer if they are employed by a copartnership, association, or corporation, but such individuals must be independently licensed and bonded if they are self employed dealers buying livestock for the copartnership, association, or corporation rather than agents of them. This is a question of fact which must be decided in each individual case.

There is no statute requiring the bonding of agents for licensed and bonded "dealers."

Question 4. "If applicant for livestock dealers license names applicant as two or more individuals, doing business as (name of business), is one license, one bond, and one fee sufficient to comply with the statute?"

If the applicant for a livestock dealer's license names the applicant as two or more individuals, doing business under a separate name, it would be presumed that the individuals were acting as partners. Therefore, it is our opinion that one bond and one license must be secured for the partnership and separate agent's license must be purchased for each partner who will deal in livestock.

HELGI JOHANNESON

Attorney General