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a subsequent conviction of driving while intoxicated was not altered during the legislative process.

Therefore, you are advised that the one-year period of revocation for a refusal to take a breath chemical test should be imposed only in those instances where a motorist has previously been convicted of driving while intoxicated and has thereafter refused to undergo a breath chemical test in connection with a subsequent driving while intoxicated conviction.\*

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General of New Jersey*  
By: WILLIAM J. STOHLER  
*Deputy Attorney General*

\* Pursuant to L. 1977, c. 29, §1(a), N.J.S.A. 39:4-50(a), however, a second offense of driving while intoxicated occurring 15 or more years after the first conviction is to be treated as an initial offense. Accordingly, the revocation to be imposed pursuant to §4(b) for a breath refusal in these situations would be of 90-days' duration.

June 22, 1977

EDWARD J. HOWELL, *President*  
*New Jersey Real Estate Commission*  
201 East State Street  
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 14.

Dear Commissioner Howell:

The Real Estate Commission has asked for an opinion as to whether a reciprocally licensed non-resident broker may open a real estate broker's office in New Jersey. You are advised that there is no statutory ban to prohibit a reciprocally licensed non-resident broker from opening a New Jersey branch office.

The New Jersey Real Estate License Act, N.J.S.A. 45:15-1 *et seq.* (hereinafter referred to as the License Act), specifically provides for the licensing of non-resident real estate brokers who are licensed in a state with which New Jersey has reciprocity. N.J.S.A. 45:15-20. In order to be authorized to transact the business of a real estate broker in New Jersey, the non-resident broker must be regularly engaged in the real estate business as a vocation, must maintain a definite place of business in the state of his original license, and must have been licensed as a real estate broker or salesperson for at least two years in this other state. *Id.* N.J.S.A. 45:15-12 in addition provides that

“Every real estate broker shall maintain a place of business in this State

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except such non-resident brokers who qualify for licenses under the reciprocal provisions of N.J.S.A. 45:15-20 of this article.”

Effective July 1, 1961 the New Jersey Real Estate Commission duly promulgated Rule 18, now N.J.A.C. 11:5-1.18, as follows:

“Every resident real estate broker should maintain a bona fide regularly established office for the transaction of business in the State of New Jersey. . . . *This regulation does not apply to . . . holders of the reciprocal licenses who, by statute, are not permitted to maintain offices in this State.*” N.J.A.C. 11:5-1.18(A) (Emphasis added).\*

The question to be considered is whether the Real Estate Commission’s regulatory bar against the maintenance of an office in New Jersey by a reciprocally licensed non-resident broker is consistent with the Act. There is no express provision either specifically authorizing or prohibiting a reciprocally licensed non-resident broker from opening an office in New Jersey. The provisions of N.J.S.A. 45:15-12 provide that every real estate broker shall maintain a place of business in the State, except such non-resident brokers who qualify for reciprocal licenses. An absolute statutory prohibition does not necessarily follow from the statutory exception created by that provision. Rather, the exception created for the non-resident brokers from the mandatory requirement to maintain a New Jersey office merely suggests that they may but are not required to maintain an office in New Jersey.

There is also nothing in the Act which can reasonably lead one to the conclusion that the Legislature impliedly intended to prohibit a non-resident broker from maintaining a New Jersey office. The general purpose of the Act is to provide for the regulation of the real estate business in the public interest (*Boise Cascade Homes v. Division of N.J. Real Estate Commission*, 121 N.J. Super. 228, 240 (Ch. Div. 1972), and the protection of the public is clearly encouraged by allowing reciprocally licensed brokers to maintain offices in New Jersey under the jurisdiction of the Real Estate Commission. In addition, the Legislature has specifically provided for the protection of the public from abuses by non-resident licensees. An applicant for reciprocity must consent to personal jurisdiction in this state (N.J.S.A. 45:15-21) and shall display a special license distinguishable from licenses issued to residents (N.J.S.A. 45:15-20). Thus, it may be assumed that the Legislature did not, in the absence of an express prohibition, intend to preclude absolutely the operation of an office in New Jersey.

This conclusion is further reinforced by the legislative history of the Act. The Act was adopted in 1921 and did not provide for reciprocity for non-resident brokers. L. 1921, c. 141. However, the Act did provide that a non-resident individual could obtain a resident license by conforming to all the provisions of the Act and by consenting to the jurisdiction of the New Jersey courts. All brokers including non-residents were required to maintain a place of business in New Jersey. In 1930 the Act was amended to authorize real estate brokers of other states to transact business in New Jersey, if those other states granted reciprocity to New Jersey brokers. L. 1930, c. 216. In 1938 the Legislature adopted a requirement that a non-resident broker applicant for reciprocity be licensed as a salesperson or broker for two years or more in the foreign state. L. 1938, c. 227. Reciprocity for real estate salespeople from other states was granted in 1949 (L. 1949, c. 214) and in 1953 reciprocally licensed brokers

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were granted an exemption from the mandatory requirement of maintaining a place of business in New Jersey (L. 1953, c. 229; N.J.S.A. 45:15-12). Thus, there has been a continuing pattern of regulation of reciprocally licensed non-resident brokers for many years, and consequently, it cannot be concluded in the absence of an express prohibition that the Legislature intended to prohibit the operation of branch offices in New Jersey. In fact, to infer such prohibition would be inconsistent with the statutory policy in favor of reciprocal licensing. \*\*

In view of our conclusion that there is no statutory prohibition on the maintenance of an office in New Jersey by a reciprocally licensed non-resident broker, a further question arises as to the conditions under which such a broker may maintain the New Jersey office. N.J.S.A. 45:15-20 allows a non-resident broker to do business in New Jersey so long as he maintains a definite place of business in the foreign jurisdiction. Accordingly, a New Jersey office maintained by the non-resident broker must be characterized as a branch office within the meaning of N.J.S.A. 45:15-12. That provision provides that a branch office must be under the direct supervision of a competent licensee. A competent licensee is either a New Jersey licensed broker or a qualified New Jersey salesperson. N.J.A.C. 11:5-1.19. In summary, then, a reciprocally licensed non-resident broker may maintain a New Jersey place of business which must be under the direct supervision of a competent licensee within the meaning of the regulations of the Real Estate Commission.

For the above reasons, you are advised that there is no statutory prohibition on the maintenance of a branch office by a reciprocally licensed non-resident broker in New Jersey. Rule 18 is inconsistent with the Act and accordingly is invalid. A reciprocally licensed non-resident broker may maintain a branch office in New Jersey so long as that office is under the direct, full-time supervision of a competent New Jersey licensee.

Very truly yours,

WILLIAM F. HYLAND

*Attorney General of New Jersey*

By: MARTIN L. WHEELWRIGHT

*Deputy Attorney General*

\* Sometime in 1963 the commission members established the policy that this regulation would have no effect on those reciprocally licensed brokers maintaining New Jersey offices prior to that 1963 date. This policy of "grandfathering" reciprocally licensed brokers with a New Jersey office was reaffirmed on July 22, 1975. Also on that date the commissioners voted that no reciprocally licensed broker may sponsor a New Jersey license applicant for examination or license; and further, that any New Jersey licensed salespersons presently employed by a reciprocally licensed broker may continue to be so employed until such time as that employment has been terminated.

\*\* It should be noted that nonresident brokers reciprocally licensed in New York and Pennsylvania may maintain offices in those states. In New York it is provided that "... such nonresident ... who maintains a definite place of business in some other state which offers the same privileges to licensed brokers and salesmen of this state shall not be required to maintain a place of business within this state." N.Y. Real Property Law §442-g (McKinney). Pennsylvania law similarly provides that holders of nonresident reciprocal licenses "shall not be required to maintain a definite place of business within this state." Pa. Stat. Ann. tit. 63, § 437(f) (Purdon). There is no absolute statutory prohibition on a nonresident reciprocally licensed broker in New York and Pennsylvania from maintaining an office in those states.