

MAINE STATE LEGISLATURE

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October 28, 1943

To William D. Hayes, State Auditor
Re: Sale of Real Estate by Public Administrators

Thank you for your memorandum of October 21st regarding the handling of real estate by public administrators.

Section 1 of Chapter 85 permits administrators to obtain a license to sell real estate, if necessary to pay debts, funeral charges, legacies, expenses of sale and administration, and for the erection of a suitable marker or gravestone. Inasmuch as this is a statutory provision, there can be nothing left for inference as to any other rights of the administrator under this section because of its obvious clarity. There is absolutely no right, nor power, to permit an administrator to sell lands and turn the proceeds over to the State of Maine in cases of public administration under this section.

Under paragraph 9 of Chapter 85, this language appears: After three years from the granting of administration, when it appears to be for the interest of all concerned, and no heir or other person interested therein, except creditors, can be found in the United States, public administrators can then sell any or all of the real estate of the deceased. This statute is permissive only. The use of the words, "any or all of the real estate", would indicate an alternative which would remove any inference of mandatory directive by the legislature in enacting this provision.

The difficulty of the public administrator is obvious, in that he probably could not determine that no heir or other person interested could not be found in the United States. That was the reason for my suggestion, and recently this department was consulted by one of the public administrators of the State, who happens to be a very able lawyer, and he stated that he would not dare to certify that the deceased had no heir or other person interested, in the United States.

You refer to Chapter 76. Sections 30-34 do not provide for the sale of real estate in the instance cited as provided in Section 1 of Chapter 85. Section 32 of Chapter 76 reads as follows: "When there is, in the hands of such public administrator, an amount of money, etc.," which means an amount of money and not real estate, and does not carry the implication that real estate can be converted into money.

John G. Marshall
Deputy Attorney General

JGM:c