

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

ference of opinion relative to interpretation of Section 14 of Chapter 62 of the Revised Statutes, as amended, be submitted to this office for an opinion.

You state that The Jayson Company, a Maine corporation, sells at wholesale patent or proprietary medicines in original and unbroken packages. Sales are made both to drug stores and to other types of stores which retail great numbers of these items.

It appears that the Maine Board of Commissioners of Pharmacy believes that your client, The Jayson Company, is in violation of said Section 14 by reason of its wholesale sales of drug sundries without having such items under the personal control and supervision of a registered apothecary. Complaint is also made that the designation of your client in the classified section of the telephone directory, "Druggist Sundries—Whol., Wholesale Distributors, Health Aids, Housewares, Toys, Novelties", is in violation of Section 14, and that likewise the words "Drug Sundries" and the symbol of a mortar and pestle printed on the panel of its trucks constitute a violation of the same section.

It is our opinion that if in fact non-poisonous patent or proprietary medicines, sold in original and unbroken packages, are the materials dealt in by The Jayson Company, then it is not in violation of our statutes in not having a registered apothecary who keeps personal control and supervision of the items in question. We are of the same opinion with respect to the designation of The Jayson Company in the classified section of the telephone directory and with respect to the words and figure used on the company's trucks.

In the second paragraph of Section 14, the provision of law requiring that drugs or medicines, etc., must be under the control of a registered apothecary does not apply to non-poisonous patent or proprietary medicines when sold in original and unbroken packages. The words themselves seem clear to us, and it is therefore our opinion, as stated above, that the activity of The Jayson Company, as described in your letter of May 17th, does not amount to a violation of the provisions of Section 14 of Chapter 62. . .

JAMES GLYNN FROST
Deputy Attorney General

June 17, 1954

To Real Estate Commission
Re: Transaction in another Jurisdiction

This will acknowledge receipt of your memorandum of June 16th in which was enclosed a copy of a letter by Mr. Goldsmith . . . concerning the part that the Neiditz Company took in the sale of the property known as Dryden Terrace Apartments, Orono, Maine. You state that there is no record in the Commission files of any license being issued to this company and Mr. Goldsmith inquires whether, if certain facts be true, the Commission will take action against this concern.

Section 3 of Chapter 75, R. S., provides that it shall be unlawful to act as a real estate broker or salesman without a license. Section 12 provides certain penalties for any violations of this chapter. It would therefore appear that there is no action that the Commission can take relative to this matter, as its

power is limited to the right to issue and revoke licenses. Obviously, where no license has been issued, there is no power of revocation.

The remedy, if there be one, is to report the alleged crime to the County Attorney of the County of Penobscot and he may bring such action as he sees fit after he has investigated the facts and studied the law.

We in no way intimate that there has been a violation of the law, for the reason that it is the primary duty of the County Attorney to determine that fact, and secondly that there are many cases holding that where the entire transaction takes place in another jurisdiction and the land in question is in a second jurisdiction, the licensing of the broker in the first jurisdiction is sufficient to carry him through, and the mere fact that the property is located in another jurisdiction does not require him to be licensed in that particular State, to recover. Our limited research did not disclose any criminal cases on this particular point.

As you may well wish to forward a copy of this memorandum to the County Attorney for his benefit, I will cite the following cases: *Land Co. v. Fetty*, 15 F. 2d 942 (Ga.); *Aronson v. Cardbone*, 222 N.Y.S. 721; *Tillman v. Gibson*. 161 S.E. 630 (Ga.); *Baird v. Hines*, 225 N.Y. App. Div. 65.

ROGER A PUTNAM

Assistant Attorney General

July 13, 1954

To Mildred I. Lenz, R.N., Educational Secretary, Board of Registration of Nurses

This is in response to your letter of June 24th in which you ask, relative to Section 1, paragraphs two and three, of Chapter 63, the following question:

"If a person is appointed by the Governor to fill a vacancy for an unexpired term of one year, would that individual be eligible for appointment for a full term of five years, inasmuch as she completed another's appointment rather than her own. In other words — does the sentence, 'No person shall be eligible for appointment to succeed herself,' apply to only those members who have a full term appointment, or does it also include those who fill a vacancy for an unexpired term?"

This office is of the opinion that under the law in question a person who has been appointed by the Governor to fill a vacancy for an unexpired term would be ineligible for appointment for a full term, as she would then be succeeding herself. . .

JAMES GLYNN FROST

Deputy Attorney General

July 20, 1954

To Dairy Council Committee

Re: Status

A check of the statutes reveals that the Maine Dairy Council Committee was originally formed under the provisions of Section 2 of Chapter 278 of