

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

May 1, 1957

To: Doris M. St. Pierre, Secretary, Maine Real Estate Commission

Re: Co-brokerage agreement—Failure to pay certain moneys

Richard Griffin v. Marion Freeman

I have your memorandum of April 17, 1957, with enclosed complaint and other papers with regard to the alleged failure of one Marion Freeman to pay certain moneys to one Richard Griffin. From the papers at hand it appears that Richard F. Griffin and Marion Freeman are both licensed real estate brokers in the State of Maine and that at some time they entered into a co-brokerage agreement with regard to certain property which property was sold and a commission accrued. Griffin sued Freeman and recovered judgment in the amount of \$465.17. On this judgment \$150.00 has been paid by Freeman leaving a balance due of \$315.17. The commission evidently feels that a hearing should be held to determine whether or not Marion Freeman is guilty of violating paragraph G of sub-section I of section 8 of Chapter 84 of the Revised Statutes of 1954, as amended, commonly known as the Real Estate License Law.

Paragraph G is as follows:

“Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others.”

This section must be construed in the light of the previous language of sub-section I which in part is as follows:

“Where the licensee in performing or attempting to perform any of the acts mentioned herein is deemed to be guilty of . . .”

It is our opinion that under the facts of this case as presented by the complaint and the attached papers, the Commission is without jurisdiction to hold a hearing to determine whether or not one real estate broker's license should be revoked or suspended for failure to pay money owed to another licensed real estate broker. The purpose of the Real Estate License Law is to protect the public from the false and fraudulent dealings of real estate brokers and salesmen. It was not passed to settle disputes between licensed real estate brokers. The courts are fully capable of carrying out this phase of business dealing and as this case discloses, the question of the right to part of the commission has been determined in a judicial proceeding. The complainant merely seeks to have the judgment of the court enforced by administrative action by the Commission. We feel that this is improper and outside of the jurisdiction conferred on you by the statutes. In view of the foregoing, we see no reason to comply with your request that we assist the Commission in preparing this case for hearing.

ROGER A. PUTNAM
Assistant Attorney General

May 14, 1957

To: Doris M. St. Pierre, Secretary of Maine Real Estate Commission

Re: Advertising by a licensed broker

We have your memorandum of May 9, 1957, which asks the following question:

“Can a real estate broker licensed with a place of business in Solon advertise in Skowhegan and use a Post Office box number rather than a business address?”

We find no prohibition in the law against the practice above stated. On the contrary it appears to be a common business practice in all fields, including the real estate field, to advertise in places other than where you have a place of business and use post office box numbers in many cities and towns as the occasion arises.

ROGER A. PUTNAM
Assistant Attorney General

May 24, 1957

To William D. Hayes, Chairman
Maine Board of Accountancy

We acknowledge receipt of your letter of May 9, 1957, in which you recall to mind our conversation of some time ago relative to L. D. 644, now Chapter 203 of the Public Laws of 1957.

We affirm the opinion then expressed.

The legislature can, and sometimes does, legislate a person out of an office previously created by statute.

Section 1, Chapter 80, R. S. 1954, provides that the Board of Accountancy shall consist of 3 members, one of whom shall be a practising attorney. Chapter 203 amended Section 1 of Chapter 80, R. S., repealing that portion which relates to the attorney member, and would require that all members of the Board be skilled in the art of accountancy, shall have been actively engaged in the profession of public accountant, and be holders of certificates to practise as public accountants.

The amendment contains no provision showing legislative intent that the attorney, who upon the effective date of the amendment will be lacking the statutory qualifications required of one to be eligible to serve on the Board, should hold office until his term expires.

Under such circumstances we are of the opinion that on the date when Chapter 203 becomes effective as a law, then the term of office of the incumbent attorney members expires by operation of law.

JAMES GLYNN FROST
Deputy Attorney General

June 7, 1957

To Honorable Robert B. Williamson, The Chief Justice
Re: “General Elections”

This is in response to your recent request for advice as to whether or not this office has in the past issued any opinions or given rulings with respect to the meaning of the words, “general election.” I understand that your specific inquiry is whether or not primary elections are considered general elections.

We would advise that we have no record of having ever given an opinion on this subject.