

MAINE STATE LEGISLATURE

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January 22, 1958

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John G. Poust, Esquire
Messrs. Green and Poust
231 South La Salle Street
Chicago 4, Illinois

Dear Sir:-

Your letter addressed to the Secretary of State, in which you ask several questions relating to the sale of a business, has been referred to this office for consideration.

It appears that you have a client who contemplates, for a commission, negotiating the sale of a business in this State. You further state that as a necessary part of the sale real estate and other tangible property will be sold. You ask the following questions:

"Do I correctly assume that my client need not be a licensed real estate broker in order to be able to handle the aforesaid transaction (and not be prohibited from collecting its commission by virtue of not being a licensed real estate broker.) (Note: Its commission agreement relates to a sale of the business -- not solely the real estate part of it.)

"Does your state have a reciprocal law or agreement with either the States of California or Texas which would entitle this corporation to handle an isolated or 'occasional' sale of real estate as such, regardless of whether or not other assets or property accompany the sale (assuming that one of its licensed brokers was connected with any such sale),"

We are enclosing herewith a copy of the laws of the State of Maine relating to the sale of real estate.

You will note in Section 2, subsection III, that a single transaction for a compensation or valuable consideration shall constitute the person negotiating the sale a real estate broker.

We also draw your attention to paragraph six of Section 7 of Chapter 84, which section relates to the necessity of alleging and proving that a person maintaining an action for services performed as a real estate broker was a duly licensed real estate broker.

The laws of our State do not contemplate reciprocal agreements between this and other States.

While we can find no instance decided by our court where the sale of business property including the land has been considered, we are of the opinion that an examination of the cases reveals that a majority of the cases hold that the sale of a business, including the sale of real estate as a concomitant of the sale of the business, requires that the seller be licensed as a real estate broker.

In view of the conflict of cases, it would seem wise that a license be procured for anyone contemplating such sale.

Very truly yours,

James Glynn Frost
Deputy Attorney General

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enc