

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

May 1, 1958

To Walter H. Kennett, Director, Civil Defense and Public Safety  
Re: Proposed Executive Order

We have your request for an opinion as to the legality of the herein quoted Executive Order:

STATE OF MAINE  
BY HIS EXCELLENCY  
EDMUND S. MUSKIE  
GOVERNOR  
EXECUTIVE ORDER

Pursuant to the authority vested in me by Section 6, Chapter 12 of the Revised Statutes of 1954, and all other authority vested in me by law, and upon the recommendation of the Government of the United States acting through the Federal Civil Defense Administration, I, Edmund S. Muskie, Governor of the State of Maine, do hereby issue the following Order as a necessary part of the plan and program for the Civil Defense of the State:

Upon receipt by the Government of the State from the Federal Civil Defense Administration or any other authorized agency or official of the Government of the United States of any warning of impending enemy attack other than a practice or test warning, or in the event of an actual enemy attack without warning, and provided an applicable state of emergency is not then in effect, a state of Civil Emergency shall forthwith exist throughout the State of Maine, and such state of Civil Defense Emergency shall continue until terminated by subsequent proclamation of the Governor.

Dated at Augusta, Maine, this \_\_\_\_\_ day of \_\_\_\_\_, 1958.

\_\_\_\_\_  
GOVERNOR

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 1958.

\_\_\_\_\_  
SECRETARY OF STATE

It is our opinion that the Order would not be a proper one for the Governor's Signature.

The tenor of this Executive Order is such that a state of emergency would be automatically in effect, State-wide, upon receipt by the State from the proper Federal authority of advice of an impending attack or in the event of an actual enemy attack.

It should be noted that in granting to the Governor the power to declare an emergency, the legislature set forth certain conditions which must be complied with. Initially, the Governor, having found that a disaster or catastrophe exists or appears imminent, must in his proclamation declare such fact and should further state the causes of such disaster or catastrophe, or the reason for its appearing imminent:

"Chapter 12, R.S. 1954, Sec. 6. Emergency; proclamation; powers of the Governor; . . . Whenever any disaster or catastrophe exists or appears imminent arising from attack, sabotage or other hostile action, or by fire, flood, earthquake or other natural causes, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the State. Such proclamation shall be published in such

newspapers of the State and posted in such places as the Governor deems necessary and a copy of such proclamation shall be filed with the Secretary of State.”

It appears to us from the wording of the statute that the Governor has a discretionary duty to perform which would not be properly exercised if the instant Order were to be executed.

We also feel that publication and deposit with the Secretary of State of the proclamation are conditions which a court would probably hold to be precedent to a valid proclamation. This belief is based upon the fact that the court demands meticulous care in complying with statutes which relate to the taking of one's property. So much power rests in the hands of State officers, including the power of eminent domain, once an emergency is declared, that we are of the opinion that the court would most certainly demand strict compliance with all laws that give rise to occasion for exercising their power.

If the aforementioned conditions precedent are not complied with, then it follows that the powers that can be exercised after an emergency is declared cannot be discharged, there being no valid proclamation, or if they are exercised, then they would be improperly exercised.

We would further point out that the proposed order does not even contemplate that the Governor must receive the notice mentioned in the Order. Such an Order could conceivably call for an officer other than the Governor to receive such notice and determine whether or not the notice was such as would put the Order into effect.

For the above reasons we are of the opinion that the proposed Order would not be a proper one for the Governor's signature.

JAMES GLYNN FROST  
Deputy Attorney General

May 1, 1958

To Doris St. Pierre, Secretary, Real Estate Commission

Re: Securities Licenses

. . . You state that the Banking Department has drawn to your attention the fact that a securities license must be obtained before a licensed real estate broker or real estate salesman can advertise for sale or negotiate the sale of property outside the State of Maine.

You ask for our opinion as to just how this Blue Sky Law actually affects real estate brokers and real estate salesmen licensed under Chapter 84 of the Revised Statutes of 1954.

Section 228 of Chapter 59 of the Revised Statutes of 1954 sets forth those activities relating to securities which call for a license, and read as follows:

“No dealer in securities shall in this state, by direct solicitation or through agents or salesmen, or by letter, circular or advertising, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a dealer under the provisions of the following sections. No salesman or agent shall in this state in behalf of any dealer, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a sales-