

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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-

man or agent of such dealer under the provisions of the following sections.”

Section 231 of said chapter defines “dealer” and “securities,” and so much of the definition of “securities” as relates to real property is herewith quoted:

“The term ‘securities’ shall include . . . all documents of title and certificates of interest . . . in the title to or any profits or earnings from land or other property situated outside of Maine. . . . The term ‘securities’ shall further include documents of title to and certificates of interest in real estate, including cemetery lots, and personal estate when the sale and purchase thereof is accompanied by or connected in any manner with any contract, agreement or conditions, other than a policy of title insurance issued by a company authorized to do a title insurance business in this state, under the terms of which the purchaser is insured, guaranteed or agreed to be protected against financial loss, or is promised financial gain.”

As embraced by the law relating to dealers in securities, it thus appears that documents of title or certificates of interest in real estate are considered “securities” in two instances: 1) When the document or certificate relates to land outside the State; 2) When the document or certificate relates to land in the State and that document or certificate was accompanied by such contract as is mentioned in Section 231.

The above quoted definition of “securities” is clearly worded and embraces a situation where a person sells, offers for sale, or invites offers or inquiries about land situated outside the State of Maine.

To be properly qualified for such an activity, one so engaged should be registered to sell securities.

JAMES GLYNN FROST

Deputy Attorney General

May 7, 1958

To Lloyd K. Allen, Manager Industrial Building Authority

Re: Taxation of Industrial Property

I have your memorandum of April 24, 1958, requesting an opinion on the taxes on industrial properties which the Maine Industrial Building Authority has insured.

Section 10, Chapter 91-A, Revised Statutes of 1954, exempts the property of the State of Maine from taxation. Therefore, property owned by the Maine Industrial Building Authority after default and foreclosure would not be taxable.

Section 3, Chapter 91-A, Revised Statutes of 1954, provides for the taxation of real and personal property within this state. A town has no authority to exempt anyone from taxation, and it is my opinion that the occupant of an industrial project will be required to pay a tax. In your publicity, I would not advise that it be indicated that there will be tax concessions for industries moving into this state.