

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

February 15, 1961

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

Re: Non-resident applicants on a part-time basis

This is in answer to your request dated February 8, 1961, for an opinion.

As I understand from your memorandum, a college professor domiciled in another state will be resident in the State of Maine during his summer vacations and has requested a real estate salesman's license. You have inquired as to whether or not such a license can be granted after examination.

There are no resident requirements under the real estate law. An individual who opens a place of business in the State of Maine can immediately apply for a resident license. Section 10, Chapter 84, of the real estate licensing law does not apply in this case since Section 10 only applies to non-resident salesmen and real estate brokers. In the instant case under the present law, the college professor would not be considered a non-resident broker but would have a right to apply for a resident license.

RICHARD A. FOLEY

Assistant Attorney General

February 17, 1961

To: John J. Shea, Director of Probation and Parole

Re: Detention of Probation Violators

We have examined the material submitted to this office by you along with the oral request that we consider same, with the question being whether Probation-Parole Officers have the right to make an arrest of a probation violator before consulting with the court having jurisdiction of the individual.

Prior to the 1957 Special Session amendment of the Probation and Parole Law, there existed some question as to the propriety of a Probation-Parole Officer's arresting a probation violator before reporting the matter to the court and obtaining an order for the return of the probationer.

While Section 7, Chapter 387, Public Laws of 1957 (enacting Chapter 27-A of the Revised Statutes) places in the officer the same authority with respect to the probationer as a surety might have upon a recognizance, still the provisions of Section 8 would cause such officer to hesitate before arresting a violator without advising the court prior to such arrest.

"Sec. 8. Person violating probation. When a probationer violates a condition of his probation, the Probation-Parole Officer shall forthwith report the violation to the Court, or to a Justice of the Court in vacation, which may order the probationer returned. After hearing, the Court or Justice may revoke the probation and impose sentence if the case has been continued for sentence or if imposition of sentence has been suspended, or may order the probationer to serve the original sentence where its execution has been suspended." Chapter 387, Sec. 8, Public Laws 1957.

However, amendments to Section 7 as enacted by Chapter 428, Public Laws

of 1957, clarify the powers of a Probation-Parole Officer. The pertinent portion of the law now reads as follows:

“Sec. 7. . . .

“Each Probation-Parole Officer has authority to arrest and charge a probationer with violation of probation and take him into his custody in any place he may be found, to detain the probationer in any jail for a reasonable time in order to obtain an order from the court, or Justice of the Court in vacation, returning the probationer to court as provided in section 8. In the event the Court refuses to issue an order returning the probationer as provided under section 8, the Court shall issue an order directing the immediate release of the probationer from arrest and detention. A probationer so arrested and detained shall have no right of action against the Probation-Parole Officer or any other persons because of such arrest and detention. Any action required under sections 8, 9 and 10 may be taken by any Probation-Parole Officer.”

Chapter 428, Section 3, Public Laws 1957. (Special Session)

This law now clearly places in the Probation-Parole Officer the authority to arrest and charge a probationer with violation of probation and take him into custody prior to consulting with the court.

As indicated by you in our conversations, the problem may be one of policy, regardless of how the law reads; that is, you believe that even if the law authorizes the procedure of detention prior to court order, you might, as a matter of administrative policy, direct Probation-Parole Officers to first consult with the court. On this point we have no advice to offer. Such a decision would be an administrative decision wholly within the discretion of the person administering the law.

JAMES GLYNN FROST

Deputy Attorney General

February 17, 1961

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Limitation on real estate investment by loan and building associations.

We have your memo of January 19, 1961 in which you ask for an interpretation of that portion of Chapter 59 under Section 180, Revised Statutes of 1954, which reads as follows:

“Any loan and building association may hold real estate in the municipalities in which such association or any branches thereof are located, to an amount not exceeding 5% of its shareholders' accounts or to an amount not exceeding its reserve fund; but these limitations shall not apply to real estate acquired by the foreclosure of mortgages thereon, or upon judgments for debts or in settlements to secure deeds.”

You ask in relation to the above-quoted provision, in the absence of any phrase such as “whichever is greater” or “whichever is lesser,” which limitation should apply.

The limitation “whichever is greater” should be applied when determining if