

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

counsellor shall be appointed to any office during the time, for which he shall have been elected."

It is the opinion of this office that the position of member of the State Board of Examiners and Funeral Directors and Embalmers is a civil office within the meaning of the above constitutional provision. For this reason, this office is incompatible with the office of executive counsellor and the same person cannot constitutionally hold both offices at the same time.

THOMAS W. TAVENNER

Assistant Attorney General

January 30, 1962

To: Philip R. Gingrow, Examiner, Banks and Banking

Re: Issuance of Small Loan License to Superior Finance Co.

Since my memo of January 17th you have furnished information concerning the Superior Finance Co. This information would indicate that the Superior Finance Co. did commence actual business under its charter within two years from the effective date of the legislature granting the charter.

It is a well recognized principle of law that the courts frown upon forfeitures of corporate franchises. The main object is to preserve a charter, not destroy it, and it should be preserved unless there is a plain abuse of power by which the corporation fails and wilfully neglects to fulfill the design and purposes of its organization.

This corporation was organized in 1959, has held several meetings, has borrowed \$600, has purchased a corporate seal and corporate records books.

It would appear, therefore, that the corporation did commence business within the two-year period.

GEORGE C. WEST

Deputy Attorney General

January 31, 1962

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

Re: Meaning of "Fixed and Definite Place of Business"

This is in answer to your request for an opinion inquiring whether there is any conflict between the requirement of Section 7 of Chapter 84, Revised Statutes of 1954, that every real estate broker "shall maintain a fixed and definite place of business in this state" and the definition of a real estate broker under Section 2, paragraph I, as any person "who . . . sells . . . real estate . . . as a whole or partial vocation."

It is my opinion that the above requirements do not conflict. A real estate broker may elect to sell real estate on a part time basis. The provision that the broker must maintain a fixed and definite place of business does not require that the place of business be open to the general public during regular business hours.

A real estate broker's home may be his place of business if in fact he maintains an office in his home where he conducts his real estate business.

RICHARD A. FOLEY

Assistant Attorney General

February 8, 1962

To: Lloyd K. Allen, Commissioner of Economic Development

Re: Jacobs Pay Plan, Seniority provisions of

We have your request of January 18, 1962, for an opinion as to whether or not the seniority provisions of the Jacobs Pay Plan were adopted by the 100th Legislature and if you should consider these seniority pay increases as part of your budget planning for the coming biennium.

Chapter 199 of the Private & Special Laws of 1961 provides for an allocation for a pay plan which pay plan must be approved by the State Personnel Board. Section 5 of this same chapter indicates that the intent of the 100th Legislature was to adjust the compensation of the state salary plan to reflect competitive wages as indicated in the compensation plan dated October 1960. Although the intent as expressed in Section 5 would indicate that the Jacobs Plan had been adopted in full, the limitation of Section 1 providing that such plan must be approved by the State Personnel Board, being a specific rather than a general provision, is controlling. The State Personnel Board has never adopted the seniority provisions of the Jacobs Pay Plan. This is because the 100th Legislature did not appropriate the money necessary to effectuate this section of the plan. For this reason it is our opinion that the seniority provision of the Jacobs Plan has never been put into effect and that you should not consider these seniority pay increases as part of the budget planning for the next biennium.

THOMAS W. TAVENNER

Assistant Attorney General

February 8, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Snow Plowing of School Driveways

This is in answer to your questions relative to the responsibility for plowing the snow from school property.

Question No. 1: "Is it the duty of a municipality to plow the driveways giving access to school buildings?"

Answer: Revised Statutes of 1954, Chapter 41, § 54, describes the duties of the superintending school committee and school directors.

Paragraph I of Section 54 provides:

"The management of the schools and the custody and care, including repairs and insurance on school buildings, of all school property in their administrative units."

If the driveways leading up to the school buildings of the public schools are