

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

cumstances, the Governor and the President of the Senate both become unavailable to exercise the office of Governor, then that office devolves upon the Speaker of the House of Representatives, until a President of the Senate shall be chosen. For this reason we are of the opinion that it is not mandatory for the Governor to convene the Legislature for the purpose of filling the vacancy caused by a resignation in the office of President of the Senate.

As a matter of interest, in August, 1953, the President of the Senate resigned and that office remained vacant until September, 1954.

FRANK E. HANCOCK

Attorney General

August 17, 1962

To: R. W. Macdonald, Chief Engineer, Water Improvement Commission

Re: Classification of Tidal Waters

We have your request of August 14th for an opinion with regard to the extent of the authority of the Water Improvement Commission over tidal waters in the State of Maine.

It is our opinion that the authority of the Water Improvement Commission extends out to the territorial limits of this State. As the authority of the State of Maine extends out three miles to sea from the shore line, the authority of the Commission would extend out a like distance. Specifically, water between an island and the mainland, which water is within three miles of the coastline of the State of Maine, would fall within the jurisdiction of the Water Improvement Commission.

THOMAS W. TAVENNER

Assistant Attorney General

August 17, 1962

Honorable Ralph D. Brooks, Jr.
142 High Street
Portland 3, Maine

Dear Senator Brooks:

The Attorney General has asked me to reply to your letter of August 3rd in which you request an opinion with regard to the propriety of State insurance being placed with a firm which is owned wholly or in part by a member of the State Legislature.

We have examined this problem and have discovered that the same question has been decided by this office several times in the past. On February 18, 1944, Abraham Breitbard, the then Deputy Attorney General, issued an opinion that there was nothing illegal in the members of the State Legislature contracting with the State of Maine. This opinion was based upon a letter received in 1931 from the Chief Justice of the Supreme Judicial Court. As the law in question has not

changed in any material aspect since the time of Mr. Breitbard's opinion, we can see no reason why that opinion should be altered.

It is, therefore, the ruling of this office that there is nothing in the law which would prevent dealings between the State and a member of the State Legislature.

We are enclosing for your information a copy of the opinion rendered by Mr. Breitbard and a copy of the letter from Chief Justice Pattangall.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

August 23, 1962

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

Re: Definition of Real Estate Broker — Solicitation of Advertising by Corporation

We have your request of August 22 for an opinion regarding the following question:

Does a corporation which solicits advertising with regard to the sale of homes and has brochures and folders printed and sent to all real estate brokers in a given area with regard to the sale of these homes, come within the definition of a real estate broker and thus have to be licensed under the provisions of Revised Statutes, chapter 84?

Under the provisions of Revised Statutes, chapter 84, section 2-A, II, subsection I, the law provides:

"It shall be unlawful for any person, partnership, association or corporation to act as a real estate broker or real estate salesman, or to advertise or assume to act as such real estate broker or real estate salesman, without a license issued by the commission."

The law further provides in section 2, I, that—

"A 'real estate broker' is any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers for rent, or lists or offers to list for sale, lease or rent, any real estate or the improvements thereon for others, as a whole or partial vocation."

It should be noted in the latter definition that any corporation which for consideration lists or offers to list for sale any real estate is to be considered a real estate broker and subject to the licensing provisions of chapter 84. In soliciting sellers of real estate to place advertising with it, and in undertaking to have that advertising distributed to real estate brokers, the corporation in question is engaged in "listing" real estate for sale. "Listing" has been defined as an oral agreement to sell real estate to any purchaser procured by a broker for a certain amount of money. *Zeligson v. Hartman-Blair, Inc.*, 135 F. 2d 874-876.

It should be noted that under the contract which is used by Universal Listing, Inc., that corporation agrees to notify all brokers and salesmen of any sale of the property which is being advertised. The contract also requires the seller