

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

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

to notify Universal Listing as soon as the seller gives an "exclusive" listing to any other broker. It would appear that Universal Listing, Inc. is acting as more than a mere printing house. It is, in effect, the link between the seller and the broker. As such, this corporation is engaged in a business which by definition constitutes the work of a real estate broker. This corporation should, therefore, be licensed and if such license is not procured, will be subject to the penalties provided for in section 12, chapter 84.

THOMAS W. TAVENNER

Assistant Attorney General

August 28, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries & Game

Re: Wild Turkeys

In your memo of August 23, 1962 you ask if wild turkeys are protected by the present Fish and Game laws.

The answer is Yes.

In 1955 the legislature passed section 85-A of chapter 37 which would have provided a 15-day open season on wild turkeys beginning on October 13, 1960. Then in 1959 the legislature repealed this law. At the same time section 88 of chapter 37 was amended by adding the words "hunt, kill or" in the first sentence. This section reads in part:

"No person shall hunt, kill or have in his possession, living or dead, any wild bird other than a game bird or a migratory game bird. . . . and for the purpose of this chapter the partridge, grouse and pheasant, only, shall be considered game birds, and the following, only, shall be considered migratory game birds:" (There follows a long list which does not include wild turkeys.)

It is evident that a person may only hunt, kill or have in his possession game birds or migratory game birds, under certain conditions stated in this or other sections.

The prohibition against hunting, killing or having in possession "wild birds" applies to wild turkeys.

GEORGE C. WEST

Deputy Attorney General

August 30, 1962

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

Re: Waste Discharge to Kennebunk River at Kennebunkport

We have your request of August 16th for an opinion with regard to the discharge of sanitary sewage from a motel of 20 units into the tidal estuary of the Kennebunk River at Kennebunkport.

We understand your question to be whether or not this motel can utilize the existing and grandfathered discharge line from a nearby building to gain entrance