

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

February 2, 1966
Real Estate Commission

Leo M. Carignan

Expiration of listing contracts of realty brokers.

FACTS:

Universal Listing, Inc. solicits advertising in regard to the sale of real estate and contracts with realty owners to print brochures and folders and send same to all real estate brokers in a given area. For this service, a fee is charged, which is payable upon sale of the realty. There is no definite termination date set forth in the written contract between the seller of the real estate and Universal Listing, Inc. The State of Maine has a statute which provides that contracts to list real estate for sale must contain a specific expiration date.

In your memorandum of December 13, 1965 you have set forth two questions. Your questions are based upon an actual contractual dispute between Universal Listing Inc. and a real estate seller. There is a clear conflict of evidence as to whether or not the contractual dispute referred to in your memorandum was based solely on the written contract referred to above or whether said written contract was reformed or subsequently amended or renewed by the parties. This office offers no opinion as to the merits of any civil action which may result between the parties.

Let it be clearly understood that the following information is based strictly on the terms of the written contract of Universal Listing, Inc. as submitted to this office.

QUESTION No. 1:

Inasmuch as the sum agreed upon for advertising purposes is only payable when the property is sold, is Universal Listing acting as a real estate broker?

ANSWER:

Yes.

The question as to whether or not Universal Listing Inc., as a result of the factual situation described above, is acting as a real estate broker was answered by this office in an opinion dated August 23, 1962. We affirm the position stated in that opinion and direct your attention to the following language contained therein:

“In soliciting sellers of real estate to place advertising with it, and undertaking to have that advertising distributed to real estate brokers, the corporation in

question is engaged in 'listing' real estate for sale. . . . Universal Listing, Inc. is acting as more than a mere printing house. It is, in effect, the link between the seller and the broker. . . ."

QUESTION No. 2:

If Universal Listing is, in fact, acting as a real estate broker in this case, are they violating the license law by not including a specific expiration date in the contract?

ANSWER:

Yes.

32 M.R.S.A. § 4004 provides as follows: "Any contract made by a real estate broker or salesman to list real estate for sale shall contain a specific expiration date. If the parties to the contract desire to continue the contract, a new contract must be executed."

This section of our statutes was primarily enacted to protect owners against continuing contracts entered into without realization of their effect, and would apply to both written and oral contracts.

In the absence of a specific date in the written contract which Universal Listing, Inc. uses, the seller of the realty advertised for sale, would be obligated to pay Universal whether the property was sold or removed from the market 2 days or 20 years after the contract was consummated.

Contracts which provide for such an indefinite period of time during which contractual obligations exist between the parties thereto, represent precisely the type of bargains which 32 M.R.S.A. § 4004 intends to discourage.

32 M.R.S.A. § 4056 (1) provides for the suspension or revocation of license due to the performance of certain designated acts of brokers and salesmen. Subsection (H), an all inclusive provision, provides for suspension or revocation of license for, "Disregarding or violating any provisions of this chapter."

32 M.R.S.A. § 4056 (1) (H) incorporates by reference section 4004 discussed above, and it therefore follows that a violation of 4004 subjects a licensee to possible suspension or revocation of his license.

PHILLIP M. KILMISTER
Assistant Attorney General

February 2, 1966
Personnel

Ober C. Vaughn, Director

Rights to re-employment under Federal Law of State employees completing military service.

FACTS:

By memorandum dated October 19, 1965 you have requested a ruling as to whether or not nonstatus employees of the State would be entitled to reinstatement on the same or similar position upon being released from military service. You also indicate that it is your understanding under State law that these nonstatus employees will not be entitled