STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

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

to military leave. A nonstatus employee is an employee who has not attained his permanent status in his employment within the meaning and intent of the "Personnel Law" 5 M.R.S.A. Chapter 51 through Chapter 61.

QUESTION:

Is the State of Maine liable for re-employment of nonstatus employees under pertinent provisions of Federal Law dealing with the right to re-employment upon release from military service?

ANSWER:

No.

OPINION:

5 M.R.S.A. § 555 is the provision of Maine law setting forth rights of reinstatement to employment and other benefits and the eligibility for such rights and benefits accruing to individuals who have served in the Armed Forces of the United States.

The first paragraph of 5 M.R.S.A. § 555 provides as follows:

> "Whenever any employee, regularly employed, for a period of at least 6 months by the State or by any department, bureau, commission or office thereof, or by any county, municipality, township or school district within the State, *and who has attained permanent status in such employment,* shall in time of war, contemplated war, emergency or limited emergency enlist, enroll, be called or ordered, or be drafted in the Armed Forces of the United States or any branch or unit thereof, or shall be regularly drafted under federal man power regulations, he shall not be deemed or held to have thereby resigned from or abandoned his said employment, nor shall he be removable therefrom during the period of his service." (Emphasis ours.)

If an individual under the State of Maine Personnel Law did not have a permanent status at the time he entered the Armed Forces of the United States, he is not entitled to reinstatement as a matter of right under the provisions of 5 M.R.S.A. § 555.

The pertinent provision of Federal Law dealing with re-employment rights of State employees is found in 50 U.S.C.A. § 459 (b) (c) i,ii:

> "(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position *(other than a temporary position)* in the employ of any employer and who (1) receives such certificate, and (2) makes application for re-employment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year –
>
> "(A). . . .
>
> "(B). . . .
>
> "(C) if such position was in the employ of any State or political subdivision thereof, it is declared to be the sense of the Congress that such person should –
>
> "(i) if still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status, and pay; or
>
> "(ii) If not qualified to perform the duties of such position by reason of disability sustained during such service but qualified to perform the duties of any other position in the employ of the employer, be restored to such other position

the duties of which he is qualified to perform as will provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case." (Emphasis ours.)

Since this Federal Statute says in effect that an individual who had a temporary position with a state prior to his induction in the Armed Forces is not entitled to reinstatement as a matter of right, and since a person with a temporary position does not have a permanent status under State law, it follows that the State of Maine is not liable for re-employment of nonstatus employees under pertinent provisions of Federal Law.

JEROME S. MATUS
Assistant Attorney General

February 3, 1966
Labor and Industry

Marion E. Martin

Public Works, Fair Minimum Wage Rate; definition of term majority.

FACTS:

Section 1306 defines fair minimum rate of wages stating that it ". . . . shall be the rate of wages paid in the locality in this state as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry. . . ." (Emphasis supplied)

QUESTION:

Does the word "majority" as used in section 1306 quoted above mean 50% plus one?

ANSWER:

No.

OPINION:

26 M.R.S.A. § 1305 provides as follows:

"It is declared to be the policy of the State of Maine that a wage rate of no less than the *prevailing hourly rate* of wages for work of a similar character in this State in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements." (Emphasis supplied)

We believe that when the legislature in section 1306 speaks of the wage paid "to the majority of workmen, . . . in the same trade or occupation in the construction industry," what is meant is the prevailing rate of wages or labor market wage rate, and not necessarily the hourly wage rate which is paid to 50% plus one of the number of workers in a particular trade.

Standing alone, the word majority means the greater number, or more than half of the whole number. If one were to ignore other sections of the statutory law which provide for the establishment of a fair minimum rate of wages to govern employment on state public improvement contracts, one might conclude that such a minimum wage rate