

MAINE STATE LEGISLATURE

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Yes ✓
May 10, 1966

Leo M. Carignan, Executive Secretary Real Estate Commission
Phillip M. Kilmister, Assistant Attorney General

Denial of License Because of Falsifications of Applications.

FACTS:

A question on the application form for licensure as a real estate broker reads as follows:

"Has applicant been convicted by any Court for any offense?"

Mr. X, an applicant, answered this question in the negative. The Real Estate Commission discovered that less than two years prior to the submission of his application, Mr. X had been fined \$25.00 for the offense of failure to extinguish a fire.

QUESTION:

May the Real Estate Commission refuse to issue a license to Mr. X for his failure to truthfully answer the above-stated questions?

ANSWER:

No.

The supplying of false information under oath is not synonymous with "false swearing" in regard thereto.

"To constitute false swearing, it must appear that the matter sworn to was judicially pending or was being investigated by grand jury or was a subject on which accused could legally have been sworn, or on which he was required to be sworn." (Emphasis supplied.) Capps v. Commonwealth, 294 Ky. 743, 172 S.W. 2d 610, 611.

Although licensing statutes frequently provide that the filing of false information in applications required to be made under oath shall constitute perjury or false swearing, courts have held that the information required to be submitted under oath must be germane to the purpose of the licensing statute requiring such information.

We do not look with favor upon those who supply false information in a license application regardless of the relevancy of such information. However, we believe that an applicant for licensure need only swear to that information which the law requires to be submitted under oath.

The information which real estate broker and salesman applicants must submit is set forth in 32 M.R.S.A. § 4103, 4105.

32 M.R.S.A. § 4105 provides that every applicant shall furnish a sworn statement and reads in part as follows:

" . . . The applicant shall state whether he has been convicted of a criminal offense involving moral turpitude, and if so, what offense; if the applicant is a partnership or association, whether any member thereof has been so convicted, whether any officer or director has been so convicted."

The term moral turpitude is a somewhat nebulous expression which the courts have used to describe those crimes of a highly aggravated and immoral nature.

"Generally speaking, crimes malum in se involve moral turpitude, while most offenses that are unlawful only because made so by statute, do not. Moral turpitude implies something immoral in itself regardless of its being punishable by the law. It is an act of baseness, vileness, or depravity in the private or social duties which man owes to his fellowmen or to society

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in general, contrary to the customary rule of right and duty between man and man. It is something done contrary to justice, honesty, modesty and good morals." State v. Jenness, 143 Me. 380 (1948).

We do not believe that any court could properly classify the statutory offense of "failure to extinguish a fire" set forth in the above-stated factual situation, as constituting a crime of moral turpitude.

Because there is no statutory authority requiring an applicant for licensure to submit under oath information regarding conviction for crimes other than those involving moral turpitude, we conclude that a failure to disclose such information does not constitute a false swearing in regard thereto.

In closing, we note that all of the questions on the application which must be submitted to the Commission for approval by the prospective licensee must be answered. Failure to properly complete the applications results in a rejection of same by the Commission. The filing of inaccurate answers to questions on an application hardly constitutes a proper completion of said application. We therefore conclude that where false answers are voluntarily submitted by an applicant, that it is proper for the Commission to reject his application and require said applicant to file a new application.

Phillip M. Kilmister
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PMK/all