

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

REASONS:

The Real Estate Transfers Law provides in pertinent part:

“There is imposed, on each deed, instrument or writing by which any lands, tenements or other realty *sold . . . a tax . . .*” (Emphasis supplied) 36 M.R.S.A. § 4651.

We read the above statutory language to mean that in order for the real estate transfer tax to be effective there must be a sale of lands, tenements or other realty. The facts furnished by the attorney for the corporation clearly indicate there was no sale. The deeds were given as a distribution of capital assets. The fact that in one instance the value of the property distributed was \$2,000 more than the distributive share of one shareholder was offset by the shareholder replacing \$2,000 in the capital account of the corporation. In no instance was there a sale by the corporation and therefore no tax is imposed under the Real Estate Transfers Law.

JEROME S. MATUS
Assistant Attorney General

February 23, 1970
Real Estate Commission

Leo Carignan, Executive Secretary

SYLLABUS:

An auctioneer, engaged in the sale of real estate in Maine for the Small Business Administration must be licensed by the Maine State Real Estate Commission.

FACTS:

The Small Business Administration, a federal agency, has engaged a private auctioneer in this State to sell real estate for it. The auctioneer so engaged is not licensed by this State as a real estate broker or salesman.

QUESTION:

Is an auctioneer under the above circumstances required to be licensed in this State?

ANSWER:

Yes.

OPINION:

In general, any person, firm, partnership, association or corporation that offers real estate for sale for others, as a partial or whole vocation, falls within the definition as a real estate broker. 32 M.R.S.A. § 4001.

Since auctioning real estate has been classified by Opinion of the Attorney General, dated June 29, 1956, as an activity requiring a license, the subject auctioneer must meet this requirement unless there are special circumstances that would remove him from

these license provisions. The fact that the auctioneer is engaged by the Small Business Administration is of no relevant significance.

The exemptions from the licensing sections under 32 M.R.S.A. § 4001, sub-section 3 include:

“ . . . any person, partnership, association or corporation who as owner or lessor shall perform any of such acts . . . or . . . the regular employees thereof . . . where such acts are performed in the regular course of, or as an incident to the management of such property . . . ”

Since the auctioneer is not a regular employee performing these acts as an incident to the management of the subject property he would not qualify for this state exemption.

Counsel for the Small Business Administration has argued that the auctioneer is exempt from our State laws because his commission is paid by the Administration.

It is apparent that an independent auctioneer is not an authorized agent of the Small Business Administration, within the meaning of the following language from the Small Business Act:

“The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act; . . . ” 15 USCA § 624(a)

Whether or not an agent of the administration would be exempt from our real estate laws we need not now decide.

In conclusion, if an auctioneer is engaged in an activity that requires a license from the Maine Real Estate Commission he does not become exempt from the license requirements merely because he is auctioning property owned by the Small Business Administration.

CLAYTON N. HOWARD
Assistant Attorney General

February 26, 1970
Legislative Finance Office

Samuel A. Hinds,
Assistant Finance Officer

Per diem allowance for Interim Legislative Investigating Committee

SYLLABUS:

Members of an Interim Legislative Investigating Committee may not receive a per diem allowance unless specific provision is made therefor in order creating the committee.

FACTS:

An Interim Legislative Investigating Committee was created by a joint order (S.P. 633) of the Special Session of the 104th Legislature to investigate certain aspects of the Maine Industrial Building Authority and Maine Sugar Industries. No provision is made in the order for compensation or expenses of members of the committee.