

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

buy, or negotiates the purchase or sale or exchange of real estate, . . . or offers to list for sale . . . any real estate . . . for others as a whole or partial vocation.” (Emphasis added.) 32 M.R.S.A. § 4001 (2).

The subject withdrawal agreement provides, in pertinent part that:

“If the owners should reconsider and if the above named property should come back on the market and be for sale at any time during the next 6 months, the owners do agree to relist their property with the above named broker and A.B.C.M.L.S., Inc. at an agreed price, for a period of not less than 4 months and at a commission rate of % of the selling price.”

The above language would appear to obligate the owner to relist his real property, as for sale, with both the broker and A.B.C.M.L.S. at a stated commission rate.

Since A.B.C.M.L.S. is party to an agreement wherein an owner of real estate purports to agree to list his property as for sale with A.B.C.M.L.S. for a commission, the listing service would be engaging in an activity which falls within the definition of a real estate broker, to wit:

“. . . [one] who for a compensation . . . offers to list for sale . . . any real estate . . . for others as a whole or partial vocation.” 32 M.R.S.A. § 4001 (2).

It should be noted that I offer no opinion as to the legal rights of the parties to the subject agreement but instead consider the language of the agreement for what it purports, on its face, to accomplish.

In conclusion, if the A.B.C.M.L.S. offers to or does enter into an agreement containing the language as noted earlier it would be acting as a real estate broker under 32 M.R.S.A. § 4001 (2) and as such would be required to comply with the licensing provisions of this State.

CLAYTON N. HOWARD  
Assistant Attorney General

September 17, 1970  
Labor and Industry

Joseph W. Emerson, Chief Inspector of Boilers

Boiler Regulation in a Commercial, Nuclear, Electric Power Plant in Maine

#### *SYLLABUS:*

Steam generators in a commercial electric plant, including a nuclear operated plant, located within this State, are under the control of the federal government (42 USC §§ 2021 (c), 2014 (cc) and 2133 and 2018) or the Maine Public Utilities Commission, 35 M.R.S.A. § 15, and 42 USC § 2021 (k).

#### *FACTS:*

A commercial, nuclear, electric power plant contains “steam generators,” which, by definition, are “boilers.” 26 M.R.S.A. § 173 empowers the Maine Board of Boiler Rules and Regulations to “formulate rules for the safe and proper construction, installation, repair, use and operation of steam boilers in this State.” On March 24, 1964, the Board adopted Section III (Nuclear Vessels) of the American Society of Mechanical Engineers Code, “insofar as this Section may apply to steam boilers or ‘steam generators’ in nuclear steam generating installations in this State.” 26 M.R.S.A. § 142 provides that “This

subchapter [includes §173] shall not apply to boilers which are under federal control; or those under the control of the Public Utilities Commission; \* \* \* \*”

*QUESTION:*

Is the Maine Board of Boiler Rules and Regulations authorized to regulate steam generators in a commercial, nuclear, electric power plant located in Maine?

*ANSWER:*

No.

*REASONS:*

An electrical plant operated within this State for the public sale of electricity (35 M.R.S.A. § 15, 5 and 15, 6) “is declared to be a public utility and to be subject to the jurisdiction, control and regulation of the [Public Utilities] Commission \* \* \* \*” (35 M.R.S.A. § 15, 13) and is required by 35 M.R.S.A. § 51 to furnish safe facilities. The definition of an electrical plant provided in the foregoing references clearly encompasses the steam generators (boilers) in a commercial, nuclear, electric power plant located within this State. Hence, unless preempted by federal law, such boilers are under the control of the Maine Public Utilities Commission, and 26 M.R.S.A. § 142 expressly precludes the Maine Board of Boiler Rules and Regulations from exercising any regulatory power over such boilers.

The Atomic Energy Act provides for federal control of the use of atomic energy. It gives to the AEC Commission the responsibility for regulation of the construction and operation of any utilization facility. 42 USC § 2021 (c). Such a facility includes a commercial, nuclear, electric power plant located within this State. See 42 USC §§ 2014 (cc) and 2133. However, 42 USC § 2021 (k) provides that:

“Nothing within this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.”

Furthermore, 42 USC § 2018 states:

“Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission; PROVIDED, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.”

Hence, it is clear that the federal Atomic Energy Act has preempted regulation of the nuclear reactor within a commercial, nuclear, electric power plant located in this State, leaving to the State the regulation of all other activities of such a plant, provided such State regulation does not affect the preempted area of federal regulation of radiation hazards. Determination of whether or not State regulation of a steam generator in a nuclear power plant could be accomplished without interference with federal regulation of radiation hazards would require technical evaluation of a particular steam generator in a specified nuclear power plant. However, such a determination is unnecessary at this time, since it is immaterial to the question posed in the current inquiry. It is certain that any such boiler is either under federal control or under the control of the Public Utilities Commission, and that, in either event, any such boiler is exempted from regulation by

the Maine Board of Boiler Rules and Regulations. 26 M.R.S.A. §142.

CHARLES R. LAROUCHE  
Assistant Attorney General

October 1, 1970  
Legislature

Raymond Rideout, Ch. Gov. Operations

*University of Maine Motor Vehicles*

*SYLLABUS:*

1. The University of Maine is a body corporate and its motor vehicles are not state-owned vehicles.

2. The University of Maine, being an instrumentality and agency of the State for restricted purposes, the Secretary of State is authorized to issue registration certificates and plates without fee to State governmental agencies.

3. Since the University of Maine is an instrumentality and agency of the State for restricted purposes, there is no legal impediment to the inclusion of its motor vehicles under the State's insurance contract.

*QUESTIONS:*

1. Are the University of Maine vehicles considered State vehicles and are they covered under Chapter 544 of the Public Law as enacted by the Special Session of the Maine Legislature?

2. If the University vehicles are not State owned, do they have to pay excise taxes and/or license fees for their registration?

3. If the University vehicles are not State vehicles, can they be legally covered under the State Motor Vehicle Insurance contract?

*ANSWERS:*

1. No.

2. See Reason 2.

3. See Reason 3.

*REASONS:*

1. The University of Maine was established by P. & S. Law 1865, Chapter 532, as a body politic and corporate by the name of The Trustees of the State College of Agriculture and Mechanic Arts with power to establish and maintain a college. In *Orono v. Sigma Alpha Epsilon Society*, 105 Me. 214, it was held to be a legal entity wholly separate and apart from the State. It holds its property, both real and personal, in the name of the University. Although by 20 M.R.S.A. § 2252, as enacted by P.L. 1945, Chapter 98, it was declared to be an instrumentality and agency of the State for restricted purposes, it was said in Opinion of Attorney General, April 30, 1945, that the reason for this declaration was in connection with the University's entitlement to receive Federal funds, and the University has continued to hold its property in its own name, and to exercise the powers of a corporation. As recently as 1967, the Act to Coordinate