

# MAINE STATE LEGISLATURE

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Real Estate Commission

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**Educational Requirements for Applicants**

**SYLLABUS:**

Statute purportedly authorizing Real Estate Commission to approve courses, where no legislative standards for approval or regulation are fixed, is an unconstitutional delegation of power to legislate. Balance of the statute should be interpreted as though unconstitutional portion had been stricken out.

**FACTS:**

32 M.R.S.A. § 4103 sub-§1.E prescribes the educational qualifications for real estate license applicants as follows:

"An applicant for a real estate broker's or salesman's license shall submit to the commission written evidence, verified by oath, that the applicant has a high school education or its equivalent approved by the commission. If the applicant is applying for a real estate broker's license, he must in addition have satisfactorily completed an educational course in the field of real estate approved by the commission or been employed as a licensed salesman full time for at least a year. The conditions of this paragraph shall not be applicable to persons who have held any license from the commission prior to December 31, 1963." (Emphasis supplied.)

Real estate courses designed to prepare applicants for the State examination have been taught for several years by the University of Maine and private course operators.

**QUESTIONS:**

1. Can the Real Estate Commission establish standards of instruction for real estate course operators and enforce same by conditioning its approval of any particular course upon compliance with Commission standards?

2. If the answer to 1 is negative, how may an applicant qualify for the examination by having "satisfactorily completed an educational course in the field of real estate approved by the Commission"?

3. What is meant by the statutory wording "an educational course in the field of real estate approved by the Commission"?

ANSWERS:

1. No.
2. Applicants must show they have completed a real estate course to the satisfaction of the school or course operator.
3. The statute must be read as requiring an educational course in the field of real estate, without regard to Commission approval.

REASONING:

While 32 M.R.S.A. § 4103 does explicitly call for course approval by the Commission, no legislative standards have been set to be used as a basis for the commission to exercise its discretion to approve or disapprove a course. The statute as it stands presently without standards for approval, attempts an unconstitutional delegation of legislative powers to the Real Estate Commission to regulate and control such matters as what the courses must teach, their term or number of classroom hours, minimum passing grades, whether the grades and attendance record must be made available to the Commission, and qualifications of the teachers. "Approval" differs little from "regulation" here. Withholding approval of a course for non-compliance with Commission standards is a sanction of the power to regulate the operation of the schools, a power which the Commission does not possess. Such authority to regulate courses has not been constitutionally granted the Commission by the very generalized wording of 32 M.R.S.A. § 4101 that "the commission shall make and enforce rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce this chapter." A discussion of legislative standards necessary to properly vest regulatory authority in an administrative agency appears in Irving M. Small v. Maine Board of Registration and Examination in Optometry, 293 A. 2d 786 (1972):

"From the constitutional prohibition of the delegation of legislative powers, two fundamental concepts emerge: '(1) the legislature may not confer a discretion as to what the law shall be put it may confer discretion

in the execution or administration of the law; and (2) the legislature must declare a policy and fix a standard in enacting a statute conferring discretionary power upon an administrative agency, but the agency may be authorized to "fill up the details" in promoting the purposes of the legislation and carrying it into effect."

"In order to avoid an unlawful delegation of power, the legislative authority must declare the policy or purpose of the law, and, as a general rule, must also fix the legal principles which are to control in given cases by setting up standards or guides to indicate the extent, and prescribe the limits, of the discretion which may be exercised under the statute or ordinance by the administrative agency. Otherwise, the law may be construed as vesting an uncontrolled discretion and held to violate the inhibition against delegation of legislative powers."

The Law Court in the Small case held that the agency's regulations enacted pursuant to a statute which granted unlimited regulatory power with no prescribed restraints nor criterion nor guide to agency action could not be enforced. The Court further stated that rules which purport to proscribe and impose sanctions for conduct not reached by any legislative prohibition constitute an improper assumption of legislative power by an administrative agency.

It is our opinion that 32 M.R.S.A. § 4101 is defective regarding course approval in the same respect the statute granting regulatory power in the Small case was held to be defective, namely it delegates legislative power unconstitutionally because no standards for administrative regulation accompany it. With this as our premise, we turn to the questions of what meaning and administrative actions should be attached to the remaining portion of the statutory requirement that applicants satisfactorily complete a real estate course. It is a fundamental principle that a statute may be constitutional in one part and unconstitutional in another part

and that if the invalid part is severable from the rest, the portion which is constitutional may stand while that which is unconstitutional is stricken out and rejected. 1 M.R.S.A. § 71 sub-§ 8; 50 Am Jur 491, Statutes 474. Accordingly, 32 M.R.S.A. § 4103 sub-§ 1.E should be read as though the words "approved by the commission" were stricken out. Applicants should continue to be required to show proof they have taken a real estate course, and completed the course requirements and received a passing grade. This would be sufficient to show the satisfactory completion of a real estate course.

JK/mf

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