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STATE OF MAINE

Inter-Departmental Memorandum Date April 17, 1974

To Roberta M. Weil, Commissioner

Dept. Business Regulation

From John W. Benoit, Jr., Deputy

Dept. Attorney General

Subject Real Estate Commission's Authority to Conduct Examinations

This is a response to your inter-departmental memorandum asking whether the decision of the Real Estate Commission to use the Educational Testing Service examination violated language in 5 M.R.S.A. § 2351, sub-§ 3 (a part of the Administrative Code) or violated 1 M.R.S.A. § 404 (right-to-know law, so-called). We answer in the negative.

Your memorandum states as fact that no rule has been promulgated by the Real Estate Commission regarding the sources of the examination given pursuant to the provisions of 32 M.R.S.A. § 4110. In view of that, the provisions of 5 M.R.S.A. § 2351, sub-§ 3, do not apply. The authority of the Commission to conduct examinations is established by statute, not by regulation. Ibid.

The question whether the decision of the Commission to utilize a testing service concerning the conduct of examinations administered pursuant to 32 M.R.S.A. § 4110, has apparently been answered in your memorandum. You write that "a decision on the contract was not made in an 'Executive Session', but was made by the three members of the Commission." If in fact the decision was made in public, then there is no violation of the right-to-know law, so-called.

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JWBjr./ec

APR 17 1974
BUSINESS REGULATION
ATTORNEY GENERAL