

MAINE STATE LEGISLATURE

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May 29, 1974

Paul A. Sawyer

Real Estate Commission

Harrison B. Wetherill, Jr., Asst.

Attorney General

You have been making use of an "employed broker" category for licensing purposes and you have asked whether an individual in this category should be licensed as a broker or as a salesman. Any person employed or engaged by or on behalf of a licensed broker to perform the functions of a salesman must be licensed as a salesman.

You have defined an "employed broker" as being different from an ordinary broker in that he is employed by a licensed broker and takes listings in the name of an agency operated by his employer. The "employed broker", further, uses a trust account and office space common to other salesmen and "employed brokers" within the agency and is paid his fee by his employer and not directly by his clients.

There is, as you suggest, no significant difference between the functions performed by an "employed broker" and those performed by a salesman. The statutory definition of real estate salesman differentiates a salesman from a broker only by the fact that the salesman is employed by a licensed broker. This is also precisely the distinction between a so-called "employed broker" and a regular broker.

It would further appear that under your "employed broker" category individuals licensed as such are escaping the statutory requirements imposed upon all other brokers concerning maintenance of a trust account in their own name and concerning the maintenance of a fixed and definite place of business. There is no statutory authorization for any licensing category other than the two categories of broker and salesman and individuals must be licensed in the same category in which they are actually functioning.

HW/mf

AN INFORMAL OPINION