

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

February 2, 1976

Paul Sawyer, Ex. Officer

Real Estate

Phillip M. Kilmister, Assistant

Attorney General

Citizenship as prerequisite for licensure

32 M.R.S.A. § 4103(1)(F) which requires that an applicant for a real estate broker's or salesman's license, must be a citizen of the United States, would appear to be violative of the Fourteenth Amendment's equal protection clause, in the light of several recent state and federal decisions, interpretative of similar licensing provisions. The common thread which runs through the various court decisions is basically that "citizenship" as a prerequisite for licensure, represents an unreasonable interference with the right of aliens to share in the economic benefits of the community in which they reside.

The latest and most authoritative court decision on this matter, along with the decision of Sugarman v. Dougall, 413 U.S. 634, 37 L.Ed.2d 853, 93 S.Ct. 2842, is the United States Supreme Court decision of In re Griffiths, which held as follows:

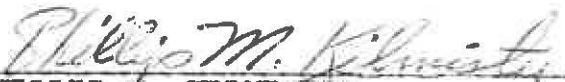
"Appellant, a resident alien, was denied permission to take the Connecticut bar examination solely because of a citizenship requirement imposed by a state court rule, which the state courts upheld against applicant's constitutional challenge. Held: Connecticut's exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Classifications based on alienage, being inherently suspect, are subject to close scrutiny, and here the State through appellee bar committee has not met its burden of showing the classification to have been necessary to vindicate the State's undoubted interest in maintaining high professional standards." In re Griffiths, 413 U.S. 717, (1973).

Although the above-designated case refers to citizenship as a prerequisite for licensure of lawyers, its application to all professions, including real estate brokers, seems to be indisputably clear.

There is currently a case in the Federal District Court in Portland, in which an alien is seeking employment as a firefighter for the City of Portland, and is contesting his exclusion for eligibility for said position, based upon a city ordinance provision which requires citizenship as a prerequisite for employment.

Paul Sawyer, Ex. Officer  
Page 2  
February 2, 1976

On the basis of the U. S. Supreme Court's decision in the Sugarman case, corporation counsel for the City of Portland have advised the City Council that said ordinance be stricken, and in response thereto, the Council has unanimously repealed said ordinance. The Federal Court (Judge Edward T. Gignoux) has not rendered a decision on this matter, and indeed, may not do so, in regard to recent Council action. Only in the unlikely event that Judge Gignoux would uphold citizenship as a basis for employment, would we feel constrained to review the above opinion.

  
\_\_\_\_\_  
PHILLIP M. KILMISTER  
Assistant Attorney General

PMK:mfe