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Bureau of Consumer Protection Authority
10 M.R.S.A. § 8002-4
9-A M.R.S.A. § 1.102
" " " 6.104

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November 16, 1977

To: Paul Sawyer, Executive Director, Maine Real Estate Commission
From: Joseph E. Brennan, Attorney General
Re: Bureau of Consumer Protection, Consumer Information Booklet

This responds to your memorandum of November 4, 1977, in which you pose several questions relating to the authority of the Bureau of Consumer Protection to publish a booklet, intended for distribution to the public, concerning the sale of real estate.

Initially you ask whether any overlapping responsibility exists between the Real Estate Commission and the Bureau of Consumer Protection such as might effectuate the provisions of 10 M.R.S.A. § 8002-4 which grants to the Commissioner of the Department of Business Regulation authority to:

"review the functions and operations of the bureaus, boards and commissions within the department to assure that overlapping functions and operations are eliminated and that each complies fully with its statutory and public service responsibilities."

The functions of the Real Estate Commission are primarily to regulate the practices of real estate brokers and the real estate industry. The functions of the Bureau of Consumer Protection, as established in 9-A M.R.S.A., and particularly sections 1.102 and 6.104 thereof, are to oversee credit transactions and protect and educate the public in regard to those transactions. In its functions, the Bureau of Consumer Protection must, of necessity, deal with matters affecting many businesses which are regulated by the Department of Business Regulation, including lending institutions and other businesses and professions who may become involved with credit transactions. To suggest that the Bureau of Consumer Protection would be barred from commenting on transactions of any

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business or profession regulated by other entities within the Department of Business Regulation on the grounds that such comment would be overlapping with the responsibility of the regulating agency would effectively frustrate the purposes for which the Bureau of Consumer Protection was established. The Legislature cannot be presumed to have intended such a result in enacting legislation placing the Bureau of Consumer Protection within the Department of Business Regulation but also giving it statutory responsibility to regulate and educate the public regarding the transactions of lending institutions and other businesses and professions which are also subject to regulation by other entities within the Department of Business Regulation. Accordingly, we find no overlapping of functions between the proposed activities of the Bureau of Consumer Protection in publication of a consumer guide relating to real estate sales and the functions of the Maine Real Estate Commission such as would be appropriate for the Commissioner of the Department of Business Regulation to address and resolve pursuant to § 8002-4.

Your memorandum also raises the question:

Does the Bureau of Consumer Protection have any authority to publish and distribute a booklet concerning the sale of real estate?

It is our understanding that the Bureau of Consumer Protection currently proposes to publish a booklet designed to aid private citizens in sale of real estate and perhaps to assist those private citizens to complete the real estate sales transaction without the assistance of a real estate broker.* We cannot say that as a matter of law the Bureau of Consumer Protection lacks authority to publish that specific publication. The rules of construction of the Maine Consumer Credit Code, 9-A M.R.S.A. § 1.102 specifies that the Act: "shall be liberally construed and applied to promote its underlying purposes and policies."

The purposes and policies of the Code, and therefore those of the Bureau, include education and counseling of consumers on credit practices and subjects relating thereto. 9-A M.R.S.A. §§ 1.102-2-C and E and 6.104-B and C. Although financing of residential housing through first mortgage loans is exempt from regulation by the Code (9-A M.R.S.A. § 1.202-8), there are other credit transactions potentially involved in the purchase and sale of homes which may be regulated.

Aside from the narrow question of jurisdiction to regulate, it is clear that the purchase and sale of residential property is the largest credit transaction most consumers will engage in during their lives. A transaction of this type may significantly effect a consumer rating and have other credit related ramifications for

* We have not reviewed the entire text of the proposed booklet; our understanding of the booklet is based on your comments and others we have received.

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many years. A booklet which helps to educate and inform consumers of options they may have relating to sale of homes would be closely related to the credit and financial interests of these consumers. Therefore, because of this relationship and the general interest and educational authority of the Bureau of Consumer Protection, we cannot say, as a matter of law, that the proposed booklet would be beyond the Bureau's authority.

We would also note that the Legislature recently gave its support for and reaffirmation of publication of the Bureau's consumer guides, through enactment of P.L. 1977, c. 179.

As we answer the first question of your memorandum in the affirmative, we do not believe it is necessary to answer the remaining questions which seek advice on actions which would be appropriate if the Bureau of Consumer Protection were acting in excess of its authority.



JOSEPH E. BRENNAN
Attorney General

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