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Manufactured Housing Licensing
10 M.R.S.A. § 9021-1
10 M.R.S.A. § 9002-9

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 25, 1978

To: David F. Preble, Executive Director, Business Regulation,
Manufactured Housing Board

From: S. Kirk Studstrup, Assistant Attorney General

Re: Opinion re Licensing by the Manufactured Housing Board

This memorandum is intended to answer the requests for an opinion of this office set forth in your memoranda of December 28, 1977, and January 5, 1978. These questions and our answers are set forth individually below. The first four questions deal specifically with the licensing requirement of 10 M.R.S.A. § 9021, sub-§ 1. The remaining three questions deal generally with the licensing authority of the Manufactured Housing Board.

No. 1. "Does this [10 M.R.S.A. § 9021, sub-§ 1] involve just new housing or does this involve all manufacturers, dealers and mechanics regardless of new or used?"

This question presumably arises because the recently enacted Manufactured Housing Act (P.L. 1977, c. 550) is not consistent in referring to the type of manufactured housing to which it applies. However, reading the Act as a whole, it becomes apparent that the legislative intent was to limit its application to new manufactured housing, with certain specified exceptions. The definitions contained in § 9002 generally do not appear to limit the Act to new housing, with the exception of the definition of "dealer" found in sub-§ 2. On the other hand, the "standards," "prohibited practices," and "fees" sections (§§ 9006, 9008 and 9013, respectively) are all phrased in terms of new manufactured housing. Similarly, the licensing provision in question, § 9021, mentions only new manufactured housing. It is our opinion that the specific references to new manufactured housing in the foregoing sections exemplify the legislative

intent that the general applicability of the Act, and specifically the applicability of the licensing provision, be limited to manufacturers, dealers and mechanics in the course of their business with new manufactured housing.

One exception which should be noted involves § 9053, "Notification and Correction of Defects." The liability of the manufacturer to notify individuals of defects extends both to the first purchaser of the manufactured housing and to any subsequent purchaser of which the manufacturer is aware. By way of comparison, the duty of a dealer to make such notification does not apply to sales or leases of manufactured housing after the first purchase.

No. 2. "Can we limit the mechanics' license to just those associated with dealers?"

The definition of a "mechanic" in 10 M.R.S.A. § 9002, sub-§ 9, includes ". . . any person engaged in servicing or installing manufactured housing for compensation and is not a regular employee of a manufacturer or a dealer." (emphasis supplied). Therefore, by definition, those individuals who perform services as a mechanic for a dealer would not be considered a "mechanic" for purposes of the licensing provision. The licensing provision would be applicable only to those mechanics who are not associated with a dealer as a regular employee of the dealer.

No. 3. "Can we classify mechanics' licenses into classes such as mechanic-oilburnermen; mechanic-electrician and mechanic?"

There is no statutory authority for making the classifications of licenses indicated in the question. The licensing provision, § 9021, speaks only in terms of mechanics, and the definition of mechanic, noted above, provides no classifications. Ordinarily, a governmental agency with rule-making authority may promulgate rules necessary to fulfill its regulatory duty. However, in the absence of any indication of legislative intent to classify mechanics into separate groups, it is our opinion that an attempt by the Board to do so by regulation would be in excess of its statutory authority. Moreover, such attempt might be interpreted as being contrary to the legislative intent as stated in the "Statement of Fact" for L.D. 1702, as amended (enacted as P.L. 1977, c. 550), which reads in part:

"This amendment also eliminates the requirements for a variety of licensed mechanics which are presently required in order to set-up these homes. . . ."

No. 4. "Will there be a conflict between federal regulations and state licensing requirements?"

This question refers to the Mobile Home Construction and Safety Standards Act (P.L. 93-383, Title VI, Section 601, 88 Stat. 700; codified at 42 U.S.C. Chapter 70, Section 5401, et seq.), and subsequent regulations issued by the United States Department of Housing and Urban Development (HUD). Generally speaking, this federal statute and the resulting regulations are designed to implement federal standards for the construction and safety of all mobile homes manufactured in the United States and imported from abroad. The Act specifically preempts further state regulation in this area. 42 U.S.C. § 5403(d). A state may enforce the federal standards, but only if such enforcement is pursuant to a state plan which has been approved by the federal agency.

Our initial reaction to the question of possible conflict between 10 M.R.S.A. Chapter 951 and the federal statute and regulations is that there would be no conflict with regard to licensing of dealers and mechanics. However, to the extent that the Maine statute purports to license and regulate manufacturers of mobile homes, we believe there may be such conflict. We suggest that you may wish to submit this question to HUD for its opinion as to the existence and extent of any such conflict.

No. 5. "Do we have the right to test licensed applicants as to experience?"

The procedures of the Board with regard to licensing of manufacturers, dealers and mechanics are stated in 10 M.R.S.A. § 9021 in the following words:

"The Board shall, within a reasonable time, issue a license to any person who intends to manufacture, sell, install or service manufactured housing in this State subject to the filing and approval of an application provided by the Board."

While this sentence indicates that the Board may design its own application, which could include statements as to prior experience, and must approve the application before issuance of the license, there is no authority stated for testing the applicants. Had the Legislature intended to confer upon the Board the authority to test applicants, it could have done so as it has for many other occupational and business licensing boards. In the absence of such legislative delegation of authority, it is our opinion that the licensing functions of the Board must be limited to designing the application or applications and ascertaining that the information furnished by the applicant is complete and correct.

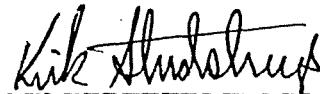
No. 6. "Do we have the authority to license all out-of-state manufacturers, dealers and mechanics who do business in the State of Maine?"

Generally speaking, business entities existing outside of a state who wish to do business within that state may be required to obtain the same licenses for that business as are required for business entities within the State, so long as the State licensing practices do not result in restraint of interstate commerce under the United States Constitution. We do not believe that the licensing requirements of Maine's Manufactured Housing Act would cause such such restraint of interstate commerce. Therefore, it is our opinion that the Board does have such authority.

One word of caution should be noted. In answer to question No. 4, we discussed the preemption by the Federal Government of state regulation of construction and safety standards for mobile homes. To the extent that licensing and collection of fees from out-of-state manufacturers of mobile homes may be considered in conflict with the federal regulations, HUD may take the position that such state action is not permissible. This is a matter which possibly should be taken up with the Department.

No. 7. "In that HUD through P.L. 95-128, excluded modular housing from their jurisdiction based on four specific conditions, should we, through adoption of rules and regulations, specify these conditions where they are not part of the law?"

We understand this question to be whether the Board should clarify its jurisdiction over modular housing by specifying in a regulation that it includes all modular housing which meets the exclusion conditions specified in the federal law. Such regulation may be helpful as a means of clarifying this point, though we do not believe it is legally necessary.



S. KIRK STUDSTRUP
Assistant Attorney General