

MAINE STATE LEGISLATURE

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Auctioneer Licensing 32 M.R.S.A. § 251
STATE OF MAINE

Inter-Departmental Memorandum Date April 10, 1978

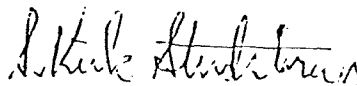
To Mary Ellen Peaslee, Director Dept. Central Licensing Division
From S. Kirk Studstrup, Assistant Dept. Attorney General
Subject Licensing of auctioneers

In an opinion dated February 9, 1978, we stated to you, in part, that the statutes regulating the licensing of auctioneers would not allow licensing of a business entity other than an individual. In other words, the corporations, partnerships, etc. may not be licensed. This opinion was limited to interpretation of the statutory wording of 32 M.R.s.A. § 251, which includes certain requirements for licensing of resident auctioneers which may not be satisfied by a business entity other than an individual. Subsequently, we conducted further research into the legislative history of these licensing requirements. This research, which supports our previous conclusion, is set forth below for your information.

Prior to 1961, the statutory provision which was the predecessor of the present § 251 - resident license - spoke in terms of licensing a "person, firm or corporation." (R.S. 1954, c. 100, § 84). However, the 100th Legislature amended the requirements for licensing auctioneers to substantially the form in which they appear today. P.L. 1961, c. 339. The originally proposed legislation was found in L.D. 140, which would have established a board of auctioneers and contained specific provisions for licensing business entities other than individuals. Section 3 of the L.D. would have provided "No person, including members of partnerships, associations and corporations, resident in this State shall hold himself out as or act as an auctioneer without a license granted by the board." Section 6 of the L.D. would have allowed a partnership, association or corporation to obtain a license and to designate one member or officer to act as an auctioneer on its behalf, while all other officers or members would have to have a separate, individual license. L.D. 140 was reported "ought not to pass" but was later enacted in new draft form (L.D. 1579, as amended by H. 299). The new draft rejected the idea of a board of auctioneers and the provisions quoted above which concerned licensing of partnerships, associations and corporations. The new draft did include the requirements found in the present § 251 which appear to require limitation of resident licenses to individuals.

The foregoing legislative history contains added support for the legislative intent expressed in the statutory wording of § 251. Consequently, it remains our opinion that the Legislature intended that licensing of resident auctioneers be limited to individuals.

The foregoing opinion is limited to licensing of resident auctioneers. It is not intended to include non-resident auctioneers, whose licensing is governed by 32 M.R.S.A. § 252, or to cover the application provisions set forth in 32 M.R.S.A. § 253. To the extent that these sections might be interpreted to allow licensing as auctioneers of business entities other than individuals, such interpretation could create possible constitutional problems. We suggest that the Department of Business Regulation may wish to consider legislation to clarify this situation.



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

cc: Commissioner Alfred W. Perkins