

MAINE STATE LEGISLATURE

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July 29, 1947

To Wallace G. Philoon, Administrative Assistant
Executive Department

I received your memo of July 28th with attached correspondence between the Maine Wholesale Tobacco Dealers' Association and Governor Hildreth, relating to the provisions of Chapter 377, P. L. 1947, "AN ACT Relating to Taxation of Cigarettes, Cigars and Tobacco Products," which was passed as an emergency measure and approved by the Governor on May 10, 1947, and became effective on July 1, 1947, as provided in Section 18 of said Act.

You state in your memo that the correspondence will indicate to me that the Maine Wholesale Tobacco Dealers' Association feels that the Governor should call a special session of the legislature to reconsider the tobacco tax as passed by the 93rd Legislature. You also state in your memo that the Governor would like to get my opinion as to the legality of calling a special session for the purpose of considering repeal of the said tax. I note by the correspondence in a letter signed by G. E. Ferrell, Secretary of the Maine Wholesale Tobacco Dealers' Association, dated June 19, 1947, addressed to the Governor, that the request is that the Governor give further consideration to the calling of a special session of the 93rd Legislature to repeal the tobacco and cigarette tax which was unfairly imposed upon them. Mr. Ferrell sets forth in his letter that he has several petitions with thousands of signers thereon, and he gives his reasons:

1. No hearing granted us on tobacco and cigar rider added on Cigarette Tax Bill.
2. Delay caused in delivery to our retailers.
3. Lack of space in our plants for additional work which has to be done.
4. Discount allowed inadequate to even begin to pay cost of labor.

On looking over the Legislative Record, I find that on May 6, 1947, Representative Sleeper of Rockland presented House Amendment to House Paper 635, L. D. 415, "AN ACT Relating to Tax on Cigarettes." This was designated "House Amendment A" and included tobacco products of all descriptions. On the 8th, House Amendment "A" to House Amendment "A" was adopted in the House and sent to a Committee on Conference, which reported "Ought to Pass," and printed under House Rules. This is the amendment which is now part of the law of Chapter 377. In this amendment they changed the title "AN ACT Relating to a Tax on Cigarettes" to "AN ACT Relating to Taxation of Cigarettes, Cigars and Tobacco Products." The emergency preamble was placed on this act, with the effective date fixed at July 1, 1947. This is the law now mentioned by the Maine Wholesale Tobacco Dealers' Association in its letter to the Governor dated June 19, 1947.

The Legislature adjourned May 14th, 8 days after the first cigar and tobacco tax amendment was offered in the House. The tobacco lobbyists had six or eight days in which to protest to the legislature before the adjournment of the legislature, as the act was not effective until July 1st, and four days, after it was signed by the Governor.

While I do feel that it is probable that in the last days of the session there was a considerable legislative jam, as the members were looking for adjournment as soon as possible, yet the amendment, in my opinion, was germane to the original bill, as cigarettes are made of tobacco and are a tobacco product. There is no provision of law for the Governor to call a special session of the legislature, but the Constitution provides that "He may on extraordinary occasions convene the legislature;" Section 13, Article V, Part First, Constitution of Maine.

The question really boils down to a constitutional one as to whether or not the request of the Maine Wholesale Tobacco Dealers' Association to call a special session creates an extraordinary occasion. In my opinion "extraordinary occasions," as used in the Constitution in Section 13, Article V, Part First, means occasions deemed extraordinary by the Governor.

In order to determine whether this situation created by the Association is an extraordinary occasion, the Governor should look at the Legislative Record and the facts before him. The Legislature, at its regular session, passed this emergency measure, which the Governor approved on May 10, 1947, and in this measure the effective date of the law was July 1, 1947. Now, if he should call a special session of the Legislature, he must set forth in his proclamation to the Members, the purpose for which he is calling the special session, which in this case would be to consider repeal of the tobacco and cigarette tax which the Maine Wholesale Tobacco Dealers' Association claims was unfairly imposed upon them by the passage of Chapter 377 of the Public Laws of 1947. Assuming that the Legislature was assembled in a special session for this purpose, has the Governor any assurance that they would repeal or amend Chapter 377, P. L. 1947? Once they are assembled under the call, the Legislature would be free under the Constitution to do as it saw fit, and it could even amend the provisions of Chapter 377 increasing the tax on tobacco products. It could refuse to do anything about disturbing the law which is now in operation, and leave it as it is.

You can readily see the awkward position in which the Governor would be placed if he called a special session of the Legislature to repeal an emergency act which was necessarily passed by two-thirds of the members at the regular session and approved by the Governor. Should the members of the Legislature consider that this was not an extraordinary occasion under the Constitution of Maine for calling them in special session, the Governor would be criticized for issuing his proclamation for said special session. . .

Ralph W. Farris
Attorney General

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