

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

September 23, 1949

To Everett F. Greaton, Executive Secretary,
Maine Development Commission

Re: Information Center, Kittery—contract for construction

I shall have to revamp this contract as to form, to follow out the provisions of Chapter 206, P&SL 1949, authorizing this construction, and Chapter 35 of the Revised Statutes concerning the powers and duties of the Maine Development Commission, which is a State agency.

I am returning the rough draft which you handed me the other day, to take up with George Varney in regard to the essential elements which you desire to have in the contract. You will note that Chapter 206, P&SL 1949 authorized the State of Maine information center, and the law states that the building is to be known as the State of Maine Information Center. I feel that you should follow the legislative language in designating the name of the building which is to be constructed at Kittery at the junction of state Highway U. S. #1 and the terminus of the Maine Turnpike.

In regard to taxation, the State of Maine is not liable for taxes, and as I understand it, the Turnpike Authority is not liable for taxes, and I doubt whether there should be a clause in there raising the question of taxes, unless George feels that the property is subject to taxation. The building, when completed, will be the property of the State and will not be subject to taxation. I should prefer that the clause relating to assessment of taxes be left out of the contract. . .

RALPH W. FARRIS
Attorney General

September 30, 1949

To Hon. Edgar F. Corliss, Public Utilities Commission

Your letter of September 22nd received, stating that a certain motor vehicle carrier for hire is transporting pulp wood from Kennebago in the State of Maine for the Brown Company in Berlin, N. H., and is performing this transportation under authority granted to him by the Interstate Commerce Commission. He travels some 30 miles by private way, some 30 miles over public highways to the boundary between Maine and New Hampshire, and than an additional 33 miles to the point of delivery to said Brown Company at Berlin, N. H.

You cite Section 22 of Chapter 44 of the Revised Statutes of Maine as amended by Chapter 263 of the Public Laws of 1949, which provides in part as follows:

“In order that there may be proper supervision and control of the use of the highways of this state, every person, firm or corporation transporting freight or merchandise for hire by motor vehicle upon the public highways between points within and points without the state is required to obtain a permit for such operation from the commission. . .”

I call your attention to the fact that the purpose of this law is to supervise and control the use of the highways of *this State*, and not other States and Canada.

Then you quote Section 27 of Chapter 44, subsection I, paragraph E, as amended by Chapter 212, Section 1, P. L. 1949, which reads as follows:

“While engaged exclusively in the hauling of wood, pulpwood, logs or sawed lumber from the wood lot or forest area where cut or sawed to points within 60 miles thereof, by highway, or while hauling, within said distance, horses, crew, equipment and supplies to or from such wood lot or forest area.”

Upon this statement of facts and the law you ask the following question: “Is the above carrier exempt from the provisions of said Section 22 under said Section I, E?” and add that the Commission asks my interpretation of the meaning of the law in this matter.

You will note that the first sentence of Section 27 of Chapter 44 reads: “There shall be exempted from the provisions of sections 18 to 26, inclusive, the operation over the highways of motor vehicles: . . .” Paragraph E of subsection I of said Section 27 provides the exemption of hauling of wood, pulpwood, logs and sawed lumber from the wood lot or forest area where cut or sawed to points within 60 miles thereof by highway.

It is my opinion that the legislature intended to include only public highways within the State of Maine, as under the Constitution of the United States they have no police powers for controlling highways outside the State of Maine. If the legislature attempted to do so, in my opinion it would be imposing an undue burden upon interstate commerce.

This contract motor vehicle carrier is transporting pulpwood under authority of the Interstate Commerce Commission and is using only 30 miles of the public highways in Maine, while he is entitled, with other citizens of the State, to use 60 miles and come within the exemption provided in paragraph E of said subsection I, as amended by the Public Laws of 1949. If this were not so, one contract carrier could use 60 miles of a highway under this amendment, in Maine, and another contract carrier using only 30 miles of highway in interstate commerce might be obliged to secure a permit under Section 22, whereas Section 27 provides that there shall be exempted from the provisions of Sections 18-26, inclusive, the operation over the highways of motor vehicles, which, in my opinion, means public highways of the State of Maine. Therefore, if this contract carrier does not use over sixty miles of public highway in Maine, in my opinion it is not necessary for him to secure a permit under Section 22.

It is true that Section 22 provides that motor vehicles upon the public highways between points within and points without the state shall obtain permits, but Section 27 subsequently exempts the carrier if he does not travel over sixty miles by highway. It is my opinion that the 30 miles traveled by private way would not be included in the term “by highway” as intended by the legislature, as the word “highway” is a generic term embracing all kinds of public ways and does not include private ways.

It is true that large numbers of motor vehicle carriers hauling pulpwood for short distances in Maine to plants outside the State of Maine would naturally increase the dangers to our public highways and would make some more effective regulation necessary to reduce the wear on the highways.

Before the amendment of 1949, paragraph E of subsection I of Section 27 provided only 40 miles from the point in the forest area where the wood was cut, without mentioning highways, but the legislature saw fit to extend the 40-mile exemption to 60 miles on our highways. Therefore if it had intended to include those trucks doing interstate commerce business on our borders, it would have reduced the exemption to 20 or 30 miles rather than extending it to 60, as it did in paragraph I, relating to transportation of seed, feed, fertilizer and livestock.

I trust that this answers your question.

RALPH W. FARRIS
Attorney General

October 1, 1949

To Harold I. Goss, Secretary of State
Re: Itinerant Photographers—Chapter 434, P. L. 1949

In answer to your inquiry relating to the itinerant photographers law as provided in Chapter 434 of the Public Laws of 1949, I will advise that Section 3 defines an itinerant photographer to be "a person, partnership or corporation having no regularly established place of business in this state who personally or by agents or servants goes from town to town or from place to place within a town soliciting the making of photographic pictures or reproductions with a view to selling the same to the persons solicited; . . ."

In my opinion corporations are required to secure a license, if their agents or servants come within the definition of Chapter 434.

The next question is whether the servants or agents of a corporation that has been duly licensed under the provisions of this act shall be obliged to take out licenses to practice itinerant photography; and in answer to this question I will say that Section 3 of Chapter 434, subsection 99-B provides as follows:

"Any person who practices the profession of an itinerant photographer in this state, whether as principal, agent or servant, and whether engaged in soliciting or in one or more of the operations involved in the making of photographic pictures or reproductions, shall obtain a license as hereinafter provided, . . ."

Therefore it is my opinion that even though a corporation is licensed as an itinerant photographer, its servants and agents who personally go from town to town or from place to place within a town in the State of Maine, soliciting the making of photographic pictures or reproductions with a view to selling the same to the persons solicited come within the provisions of this act, and all engaged in this business, whether corporations or individuals, must secure a license as provided by the act.

RALPH W. FARRIS
Attorney General