

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

I did not mean to imply that the wording of the statute takes away all discretionary power from the Commission in granting licenses under this provision of the statute, but that you shall grant them only to those who have qualified. It does not mean that you must grant a license to every applicant who has qualified, if in the Commission's discretion it feels that it would not be wise and would not be for the best interests and welfare of the State of Maine to do so. You have wide discretionary powers as John states in his letter. The legislature does not attempt to do away the discretionary powers of a board, commission or court in enacting legislation which contains the word "shall" as in many instances it is merely directory. . . .

RALPH W. FARRIS
Attorney General

April 27, 1950

To Carl L. Treworgy, Clerk, Racing Commission

I have your memo of April 26th, stating that the Commission would like to know if it would be legal under the statute above cited to require licenses of sulky drivers and concessionaires who sell selection cards at pari-mutuel tracks.

There is nothing in Chapter 77 that authorizes the Commission to require licenses of drivers or concessionaires at pari-mutuel tracks. This is a matter that should be taken care of by legislation if the Commission desires to have further control on the drivers and concessionaires at pari-mutuel tracks.

The Commission also asks if it would be legal to assess a fine for the failure of any horse to appear in the paddock one hour before post time.

I wish to state that the Commission does not have power under Section 9 of Chapter 77 to assess fines. This also is a matter for legislation if you wish to have a penalty for the failure of the owner of any horse to have it appear in the paddock one hour before post time.

RALPH W. FARRIS
Attorney General

May 1, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Subject: Speed at Intersections and effect of the use of dolly wheels
on registration

Under date of March 25, 1950, Troop F asked certain questions with respect to registration of vehicles equipped with dolly wheels, so-called, and under date of March 18, 1950, Troop B asked similar questions. We are answering all the questions in one memorandum and trust that your office will see that the dissemination is such as to give the answers to the respective Troops from which the questions came. These answers are being prepared in collaboration with the Deputy Secretary of State, inasmuch as it was felt that the questions more properly pertain to the laws under the jurisdiction of that department than the Attorney General's office.

In the interests of saving space we are paraphrasing the questions.

Question 1 inquires as to whether or not a car traveling on a through way such as Route 1 is required to slow to 15 miles per hour at a view-obstructed intersection. Presumably this question was asked in the light of the provisions of Section 102-II-B, found on page 62 of the Motor Vehicle Laws of the State of Maine, 1949 Edition, as compiled by the Secretary of State. On pages 52 and 53 of the same pamphlet in Sections 78 and 79 are found the applicable provisions of law which serve more or less as an exception to the 15-mile limit, so that motor vehicles on through ways duly established in accordance with law will not be required to slow down to the 15-mile limit.

A second question asks whether or not a tractor and trailer can be lawfully operated on the highway when registered for less than the empty weight of the tractor-trailer unit. A tractor-trailer unit is not lawfully registered when registered for less than the gross weight of the empty vehicle. For all practical purposes this would be a foolish registration since obviously it is intended that such a vehicle should carry loads. However, in no case is it a lawful registration when it is for less than the empty weight. The vehicle should be registered to cover any load that it may be hauling. A short-term permit (short-term increase) is not registration. It is only a permit to haul loads of larger tonnage for a limited period of time when the vehicle is otherwise properly registered.

A third question is, May a person be allowed one move a year on a house-trailer without registration?

I know of no provision of law that permits a house-trailer one move a year without registration, except that under the provisions of Section 13, found on page 8 of the pamphlet, the Chief of the State Police may under stated circumstances grant a permit in writing for an unregistered vehicle to be towed either by a service wrecker or by the use of a tow-bar.

A fourth question includes several variations or subsidiary questions, all with respect to registration of trucks equipped with dolly wheels, so called. One of these questions is substantially as follows: Can a truck with dolly wheels directly behind the regular rear wheels carry 50,000 pounds gross?

The answer to this question would appear to be "Yes," provided that the dolly wheels are so attached to the vehicle as to produce a result in compliance with all of Section 100, found on pages 60 and 61 of the Motor Vehicle Laws. For example, under paragraph 1, it would not be a lawful registration if the gross weight exceeded 32,000 pounds with the dolly wheels off the ground and not working; and provided that the total working axles on the vehicle were two, exclusive of the dolly wheels. Similarly, using the table, with the dolly wheels on the ground and supporting part of the weight, the distance in feet between the extremes of axles would have to be more than 7 feet. But this alone is not the end of compliance requirements, for due consideration must be given to that part of the section which follows the table, wherein the imparted weight may not exceed 22,000 pounds on any one axle; and if the two or more axles are less than 10 feet apart, the weight imparted to the road surface may not exceed 16,000 pounds from either axle; and the further provision must be taken into consideration that the imparted weight to the road surface may not be greater than 600 pounds per inch width of tire (manufacturer's rating). From the foregoing it would appear that it is conceivably possible to equip and rig a vehicle with dolly wheels in such a way as to permit a registration in excess of 32,000 pounds.

Properly equipped trucks with dolly wheels may be considered as three-axle trucks when the effect of the dolly wheels is such as to bring the vehicle within the limits of weights permitted to be imparted to the road surface as provided in Section 100, page 60 of the Motor Vehicle Laws.

It has also been asked whether or not it makes any difference whether the dolly wheels are supplied with motive power. The answer is that motive power has nothing to do with it. The question is simply one of weights imparted to the road surface.

Whether or not in any particular case State Police officers, in weighing trucks, should allow these trucks equipped with dolly wheels credit for three axles will depend entirely upon whether the dolly wheels carry the weight to bring the vehicle within the limits of weight imparted to the road surface.

It has also been asked, as to the measuring of the distance between the extremes of axles, whether the measurement should be taken to include the dolly wheels. In the light of the foregoing, the answer to this question would be, Yes, if, as stated above, the dolly wheels are so rigged as to perform the function of keeping the vehicle within the limits of weights to be imparted to the road surface.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 2, 1950

To Harland A. Ladd, Commissioner of Education
Re: Chapter 102, P&SL 1949; your memo of April 18, 1950

In your memorandum you ask the question:

"1. Does Chapter 102 of the Private and Special Laws of 1949 give the commissioner of education authority to approve a prorating of capital costs for the new building as a part of proper tuition charges?"

In this question your reference to "new building" refers to a proposed plan to erect a new school building, which construction would not be that of an alteration to an existing building. As you know, a town, under the general law of the State, may erect school buildings within the financial limits of the town, so that the particular question involved here, under Chapter 102, is not whether or not the Town of Brunswick has authority to construct a building, but whether, under the provisions of the chapter, the building having been constructed, you, as Commissioner, would have authority to approve an augmented tuition charge by the Town of Brunswick to towns sending pupils to Brunswick, over and above the standard tuition charge as fixed by the formula in the general law of the State.

Mr. Farris and I have studied Chapter 102 and the general laws of the State very carefully and have come to the conclusion that, under the provisions of Chapter 102, you would not have authority to approve a contract calling for an augmented tuition charge to defray the additional expense to which the Town of Brunswick had subjected itself in building a new school building.

In your memorandum you ask a second question, reading as follows:

"2. If the new building is connected to the existing high school structure by a corridor or breezeway, would this be construed as altering existing buildings and thereby make the supplementing charges legal?"