

MAINE STATE LEGISLATURE

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September 28, 1955

To Marion Martin, Commissioner of Labor and Industry
Re: Bedding and Upholstery Law

You ask three questions relating to Sections 155-162 of Chapter 30 of the Revised Statutes of 1954, dealing with bedding and upholstered furniture.

Question 1. "Is the power to make rules and regulations limited to only second-hand materials?"

Answer, No. Under the provisions of Section 160 the department is charged with the administration and enforcement of the provisions of Sections 155-162, inclusive, which include new materials, and may make reasonable rules and regulations for the enforcement of said sections.

Question 2. "What procedure must be followed for the adoption of any rules and regulations?"

It is regrettable that the statute does not provide procedure for the enactment and promulgation of the rules and regulations provided for in Section 160. We feel that you should follow the ordinary custom of having a hearing after due publication of the hearing, and then, upon determination of what the rules and regulations will be, another publication revealing that you have promulgated the rules and regulations and giving them an effective date. Our suggestion, though an arbitrary one, would be either two or three weeks' publication preceding the hearing and the same publication period before the rules and regulations become effective. We would also suggest that steps be taken at the next legislature to spell out the procedure.

Question 3. "Would the law allow the requirement of sterilization permits, by rule or regulation for 'new feathers'?"

Answer, No. Section 156 provides that no second-hand material shall be used in any article of bedding or upholstered furniture unless the same has been effectively sterilized and cleansed or disinfected. We do not believe that feathers used for the first time for such purpose can be considered a second-hand article, any more than any other product which through manufacture or processing is used for the first time as stuffing.

As you know, rules and regulations are effective only in so far as those rules and regulations tend to effectuate the intent of the statute. A rule or regulation may not go outside the scope of the statute. Thus, as the statute requires sterilization or disinfecting of second-hand material only, any rule or regulation requiring sterilization or disinfecting of new material would be void.

James Glynn Frost
Deputy Attorney General

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