

# MAINE STATE LEGISLATURE

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April 24, 1956

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To David H. Stevens, Chairman, State Highway Commission  
Re: Emergency Permits, So-called

You have requested a restatement of my oral opinion to the Highway Commission in regard to the permit issued to the Brown Company on December 21, 1953.

It is important to reconsider the facts surrounding the application for this permit. It appeared that the Brown Company had cut a large quantity of birch which had been piled in the form of long logs to be moved to their Berlin mills. They had bought a considerable number of specially constructed trucks for the quick removal of this birch. The Commission was informed that this birch was perishable (that is, it would lose its value for the Brown Company's purpose) and the Commission found this fact substantiated.

The road over which the permit was needed covered a stretch of some six miles and had a very light traffic load during the winter season for which the permit was required. It further appeared that plans had been made for the building of a storage basin, which would necessitate the flooding of this particular section of the road. Our best information indicated that this would probably occur in the near future. Furthermore, the Brown Company offered to post a sufficient bond to the effect that they would maintain the road in condition for the travelling public throughout the operation and that they would repair the road at the expiration of the permit to its original condition to the complete satisfaction of the State Highway Commission. It further appeared that the State of New Hampshire had issued a permit for the same purpose and reason for the use of some thirty to fifty miles of New Hampshire road.

As a practical matter, it seemed obvious to me that the interest of the public in this particular highway would be more than adequately protected if a permit was issued in this case. However, there were formidable legal aspects.

Section 98 of Chapter 22 granted the Commission the power to grant emergency permits. It was said that these permits

"shall be issued to cover the emergency of ~~EXPERIENCE~~ purpose stated in the application and shall be limited as to the particular objects to be moved. . . ."

Of course, "emergency" is a broad word, and arguments can be adduced on both sides as to its meaning.

"particular objects" was the stumbling block. In my mind, it could well mean a super-long pole; a bridge girder; a house or any other extra long, wide or heavy object; in other words, something that could not be subdivided into more than one load. However, taking into consideration the intent of the statute, which was primarily to protect the highways and also to permit necessitous, unusual use of

of the highways, it was my opinion that a permit could be issued in this case without any contravention of the basic legislative intent. I confess that technically my opinion could be questioned.

You further have requested my opinion as to the possibility of the Commission's issuing a general permit covering the highways of Maine for overloads.

Obviously, this would be a fantastic stretch of the legislative intent. These permits are for particular objects and the legislative intent was for each case to be considered on its merits. The legislature could have made the Commission a fact-finder as to what the overload limit should be, but obviously they did not do so. They merely gave the Commission special powers in so-called "emergency" cases. I repeat that there is some latitude in the manner of interpreting "emergency". There can be "emergency" in a great or a small degree. It has been argued that the general trucking industry and many vendors face an "emergency" on account of the weight limit. However, it is obvious that the statute did not give that kind of "emergency" power to the Commission. The use of the words "particular objects" defeats that interpretation.

You further requested me to investigate the matter of the permit issued to the Brown Company. I find that a permit, #12689, was issued to the Brown Company on December 21, 1953, for the period to April 15, 1954, to move from Lincoln Plantation to the New Hampshire line over Route #16 (six miles), by twenty semi-trailers, certain logs, gross weight of 60,000 pounds, not exceeding the legal height, weight and length. The Company was to repair all damage in the opinion of the State Highway Commission caused by this extra load and to furnish a bond in the amount of \$100,000. This permit was renewed on May 19, 1954, to cover the period from June 1st to August 31st, 1954. This was not re-renewed, although an application was made.

L. Smith Dunnack  
Assistant Attorney General

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