

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

man or agent shall in this state, in behalf of any dealer, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a salesman or agent of such dealer under the provisions of the following sections."

It is our opinion that such mortgage companies must register with your department as dealers in securities, if such sale or offering for sale is carried on in a manner embraced by the terms of Section 228, next above quoted.

JAMES GLYNN FROST  
Deputy Attorney General

March 18, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Limitation of Access Rights

From time to time the problem of the liability for damages claimed because of loss of or limitation of access rights will arise. The only recognition of such a right in our statutes is in Section 8, Chapter 22:

"When an existing highway has been designated as, or included within, a controlled access highway by said commission, *existing easements* of access may be so extinguished by purchase or by taking . . ."

This language was taken from another State's statute that was the model for our new controlled access law. Note that it says, "existing easements". Obviously this does not create any new easement.

I know of no Maine case that has held that one can obtain a prescriptive right against the State. The right of reasonable access to one's property is, of course, a vested right, but this does not mean the right to any particular access or the right to an unlimited number of places of access.

The overwhelming weight of authority has held that diversion of traffic is not legal damage. The State has the right to divert traffic for highway purposes without any liability to a by-passed abuttor.

Under the police power, which justifies control of traffic for the good of all, certain limitations of access will become necessary frequently. Under the Constitution, there is no compensation due for losses occasioned by the proper use of this power. There are numberless cases where local ordinances have caused heavy damages to individuals, but damages have not been allowed. The individual must suffer for the common good.

It might be argued in the (Frederick) French case that there is damage caused by limited of access. Since neither of the streets abutting this property is part of a controlled access highway, Section 8 is not involved. Since there was no taking of land or change in grade, there is no statutory damage. If it is argued that the use of the ways is such that it damages the property, and, therefore, is a taking of its value, and hence a legal taking, it will raise an issue that has not been decided by our courts. Obviously, the Joint Board should not attempt to resolve this question.

It is my opinion that under the police power vested in the State, there is no liability, and I advise that if this issue is raised, the Joint Board should refuse to take jurisdiction, and let the point of law go forward.

L. SMITH DUNNACK  
Assistant Attorney General

March 20, 1957

To Honorable Arthur Charles, Senate Chamber

Re: Business Hours of Barber Shops

This is in response to your oral request for an opinion on L. D. 802. In brief, this bill provides the mechanism whereby the barber shops in municipalities may be regulated as to the days and hours which they may remain open for business.

We herewith quote comment found in Volume 7 of American Jurisprudence, page 617, relating to the fixing of closing hours of barber shops:

"The majority of the cases which have considered the validity of ordinances containing provisions requiring barber shops to be closed at a certain fixed time on secular days have reached the conclusion that such provisions have no reasonable relation to the admittedly proper exercise of the police power in regulating the profession of barbering. Any such regulations depend for their validity upon the nature of the business sought to be regulated; that is, the nature of the business must be such that the public health, morals, safety, or general welfare is, or might be, affected by such business being permitted to remain open or continue after certain hours. With regard to barber shops, such a regulation bears no reasonable relation to the public health or general welfare; nor can it be supported on the theory that it will aid the enforcement of proper inspection regulations."

It appears to be the essence of the cases cited in the above quoted comment that to pick out barber shops as the one lawful business the closing hours of which are to be regulated is discriminatory. The Legislature may enact discriminatory legislation on particular classes under the police powers if in fact the public health and welfare, morals, or safety are affected by such class. However, as quoted above, the regulating of the hours of the business of barbering has been found not to affect the public health and welfare, morals, and safety.

It is our opinion that in all probability such a statute would meet with the same objection as similar statutes have met in other States.

JAMES GLYNN FROST  
Deputy Attorney General

March 27, 1957

To Ernest H. Johnson, State Tax Assessor

Re: Excise Tax on Foreign Cars

I received your memo of March 25, 1957, together with attached memorandum dated March 1, 1956 and furnished to excise tax collectors in Maine,