

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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 barbing. 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 barbing 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,

which sets forth the position which your office took on the question of the taxing of motor vehicles of foreign manufacture and imported motor vehicles on that date, and which has been followed since. Under that memorandum "the 'maker's list price' of a foreign car for the purpose of motor vehicle excising includes custom duties and transportation to the port of entry," and said memo provides a price list on 1955 and 1956 Volkswagens, supplied by Hanson-MacPhee Engineering Company, New England distributors.

You state that a question has been raised as to whether the excise tax with respect to foreign motor vehicles should be based on the retail price at the port of entry or at the retail price at point of manufacture, which would not include duty or transportation charges to this country.

You wish the advice of the Attorney General as to whether your office is correct in taking the position noted above with respect to excise tax on a foreign motor vehicle.

I have discussed your memo and the attached memo with the Attorney General, and we are of the opinion that the position you have taken on this question is the only practicable one for a uniform "maker's list price" on foreign cars for the guidance of the many excise tax collectors of this State, and we confirm the position your office has taken on this question.

RALPH W. FARRIS
Assistant Attorney General

March 29, 1957

To Allan L. Robbins, Warden, Maine State Prison

Re: Sentence for Escape from County Jail

We have your memo stating that you will appreciate our opinion on whether an inmate's sentence for escape from a county jail should run concurrently with other sentences received, if the mittimus does not specify that it shall be served consecutively.

It is our opinion that a sentence imposed upon one for escape from a county jail does not run concurrently with other sentences received by the same person.

The absence of direction on the mittimus as to the manner of service of sentence, that is, whether such sentence should be consecutive or concurrent with other sentences imposed, has no effect upon the service of a sentence for the escape of one lawfully detained in any jail or other place of confinement (except the State Prison). The sentence imposed for such escape must be served consecutively with relation to sentences for other offenses.

Chapter 135, Section 28, R. S. 1954, reads:

"Whoever, being lawfully detained in any jail or other place of confinement, except the state prison, breaks or escapes therefrom, or attempts to do so, shall be punished by imprisonment for not more than 7 years; the sentence to such imprisonment shall not be concurrent with any other sentence then being served or thereafter to be imposed upon such escapee."

The provisions of Section 28 are of so direct and positive a nature that the statute must be considered self-executing, with the result that consecutive