

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

July 9, 1957

To Honorable Edmund S. Muskie, Governor of Maine

Re: Memorandum of Understanding between Office of the Governor,  
State of Maine, and Commander, 32d Air Division (Defense),  
United States Air Force, East Syracuse, New York

We are returning to you all papers sent to this office relating to the above subject matter.

With respect to same you ask if the instrument is a proper one for your signature.

In our opinion the instrument should not be signed by the Governor of the State of Maine.

The purpose of the Memorandum of Understanding is to make available to the Commander of the 32d Air Division (Defense), for such employment, the Maine Air National Guard prior to actual mobilization, or prior to a Presidential Proclamation of a state of emergency, or prior to a Congressional declaration that a state of war exists, a proviso being that the Commander of the 32d Air Division (Defense) determines that an enemy air attack is in progress.

We have also ascertained that a function of the Memorandum of Understanding is to permit the use of the 132d Fighter Interceptor Squadron of the Maine Air National Guard outside the State of Maine, prior to such time as the necessary Proclamations have been made.

With respect to the right of the Governor, as Commander-in-Chief of the Army and Navy of the State and of the National Guard, to permit troops to go outside the State of Maine, we would draw your attention to Article V, Part First, Section 7 of the Constitution of Maine. That section reads as follows:

“He shall be commander in chief of the army and navy of the state, and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the state without their consent, or that of the legislature, unless it shall become necessary, in order to march or transport them from one part of the state to another for the defence thereof.”

This provision of the Constitution is identical with that contained in the Revised Statutes of 1841. It may be that the time has come when such provision should be amended, but in the absence of such amendment we must advise that the Agreement would not be a proper one for your signature.

JAMES GLYNN FROST  
Deputy Attorney General

July 9, 1957

To Stanton S. Weed, Director, Motor Vehicles

Re: Registration of Trucks under Chapters 309, 330 and 363, P. L. 1957.

You request an interpretation of Chapter 309, Section 2, P. L. 1957, effective August 28, 1957, providing for a new maximum in gross weight of 60,000 lbs. for trucks having four or more axles; Chapter 330, Section 4, which provides a new schedule of truck fees from the 6,000 lbs. G. W. minimum through the

50,000 lbs. G. W. brackets, effective for the calendar year 1958; and Chapter 363, Section 1, which provides a schedule of truck fees similar to that in Section 4, Chapter 330 and adds two new fees for trucks registered in the two new weight brackets of 50,001 lbs. G. W. to 55,000 lbs., and 55,001 lbs. G. W. to 60,000 lbs., also effective for the calendar year 1958.

Your question is with respect to the apparent conflict in these statutes as to your procedure in issuing registrations to such trucks as fall in the two new brackets (over 500,000 lbs.) from August 28, 1957, to the end of the 1957 registration year.

An examination of the above mentioned laws shows an anomalous situation where, effective August 28, 1957, the maximum gross weight that can be carried by trucks will be increased, but the statute relating to fees in the new classes will not permit registrations for the authorized increase until January 1, 1958.

It is our opinion that any and all trucks properly registered to carry a weight of 50,000 lbs. may, from August 28 until January 1, 1958, carry up to 60,000 lbs. without payment of any additional registration fee, without being in violation of the law. No other interpretation could be sustained from the standpoint of law enforcement. Statutes dealing with the same subject matter must be read together, and those statutes must be administered so as not to discriminate unconstitutionally against any class of individuals.

It can be seen that a foreign truck, legally registered for a weight of 60,000 lbs. in the State in which it is based, could come into the State of Maine after August 28, 1957, with a gross weight of 60,000 lbs., with impunity, and be within the framework of our law and so immune from prosecution despite its weight.

Could it have been the intent of the legislature that a situation might exist where out-of-state vehicles may roll across the highways of our State with a gross weight of 60,000 lbs. while trucks registered in Maine would be limited to 50,000?

We think not. To so hold would be to discriminate unconstitutionally against a class of people who, from any point of view, should be first in the minds of the legislature—the Maine Resident!

While the legislature may, in a given case, discriminate against a class of people, still, the classification must have a reasonable relationship to the distinction between the classes, and to the situation that needs to be controlled. We find no reasonable explanation deriving from the police power which would permit the use of our highways by foreign vehicles but not by Maine vehicles.

For the above reason we believe the laws in question require such administration as will give to all classes an equal right to use our highways. There being no means by which a truck can be registered in Maine for 60,000 lbs. until January 1, 1958, the right of user means that trucks registered for 50,000 lbs. may carry up to 60,000 lbs., if the vehicle is otherwise in compliance with the law with respect to axles, brakes, etc., without payment of registration fees for such extra weight, until December 31, 1957, after which time full compliance with all laws will be expected.

FRANK F. HARDING  
Attorney General