

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1959 - 1960**

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that the so-called Sinclair Act is constitutional in its present form. Therefore, it is my opinion that this district is a legal entity capable of exercising all of the rights, powers and duties granted under the statute provided therefor.

Very truly yours,

GEORGE A. WATHEN  
Assistant Attorney General

July 12, 1960

To: Motor Vehicle Dealer Registration Board

Re: Transit Plates

In reply to your oral request for an opinion concerning the authority of the Board to issue transit plates to the            Company, I have found the following facts: The            Company requested transit plates for the purpose of moving their motor vehicles to garages in Greenville and Ashland for repairs. These vehicles are used for non-highway purposes and are not registered under Sections 13-20, Chapter 22 of the Revised Statutes of 1954. The Company also uses these plates for transporting these vehicles over public highways when being traded with local dealers for new vehicles. Filling stations for company vehicles are maintained and the Company made application as a filling station or garage.

It would appear that the transit plates were not issued on a temporary basis for the purpose of moving new motor vehicles from the point of manufacture or delivery outside the State to points within the State.

I do not believe that the Board has authority to issue transit plates for the purposes requested by the            Company. Subsection I, D, Section 16, Chapter 22, provides for movement of certain vehicles for limited purposes on a so-called "transporter permit." It is possible that facts may warrant the issuance of a transit plate to a service vehicle under Section 29, I, Chapter 22, but we are not presently concerned with that matter.

GEORGE A. WATHEN  
Assistant Attorney General

July 19, 1960

To: George Davis, Chairman of Maine Automobile Dealers Registration Board

Re: Transit Registration Plates

I have your request for an opinion from this office regarding the issuance and use of transit registration plates. Your questions are divided into categories consistent with the types of business involved, and I shall attempt to answer in the same manner. It might be well to digress and establish certain basic principles which will be common to all the matters

being dealt with herein. A "motor vehicle" is defined in Section 1, Chapter 22, Revised Statutes of 1954, as

"... any self-propelled vehicle not operated exclusively on tracks, including motorcycles;"

The term "vehicle" is also defined in the same section as

"... all kinds of conveyances on ways for persons and for property, except those propelled or drawn by human power or used exclusively on tracks;"

The transit registration plate appears to be an extension of the issuance of dealer plates. The theory and basic purpose of the legislation was to facilitate the movement over the highways of motor vehicles being sold and traded. It was not designed to exempt a particular business from registering vehicles used in connection with the business, except as it relates to aiding them in the movement of vehicles being sold or traded as an incident to the business and for demonstration, service and emergency purposes.

Section 26-A, Chapter 22, is a broad authorization for certain enumerated businesses and others of the same class to make application for transit registration plates for the purposes set forth therein, with the limitation that transit and dealer plates shall not be used in lieu of registration under Sections 13-20, Chapter 22. This section further empowers the Board to place reasonable limitations on the use of the transit plate. Section 29, Subsection I, Chapter 22, provides that no motor truck, tractor or trailer registered under sections 21 to 29 (dealer plates and transit plates) shall be used for other than demonstration, service or emergency purposes. This subsection further defines the limits of service as the transportation of articles and materials directly connected with the service or maintenance of motor vehicles and the maintenance of the properties connected and used with such business.

I note that the legislation creating what is now Section 26-A has been added piecemeal in different sessions. It should also be noted that I must assume certain facts which are only hypothetical in my answers.

#### HEAVY EQUIPMENT DEALERS:

(1) The first query is (a) whether or not a heavy equipment dealer may use a transit plate on a truck with which he transports items sold or taken in trade? and (b) whether such items are self-propelled or not?

Answer: Pursuant to Section 29 the plates can be used on a truck for the purposes of demonstration, service or emergency purposes and for service purposes limited to the transportation of articles connected with the service or maintenance of motor vehicles and property connected or used with such business. These plates cannot be used to deliver air compressors or articles of like nature. Assuming the self-propelled equipment is a motor vehicle, the transit plate may be used for this purpose.

(2) The second query is whether or not heavy equipment dealers have the right to use transit plates on their own trucks used exclusively for servicing equipment which has been sold by him whether self-propelled or not.

Answer: Transit plates may be used on a service truck which is connected with the service or maintenance of *motor vehicles* and the property used or connected with such business. (Subsection I, Section 29, Chapter 22)

(3) The third query is whether or not a heavy equipment dealer may use a transit plate on a service truck for servicing equipment not sold by him.

Answer: Yes, provided it is for the servicing of a motor vehicle.

(4) The fourth query regards the use of transit plates on passenger vehicles owned by a heavy equipment dealer broken into three classes:

- (a) exclusively in connection with the business of the dealer?
- (b) principally in connection with the business and partially for private use?
- (c) by salesmen permitted to use vehicles for private use part time?

Answer: No, there appears to be no authorization for transit plates to be used on automobiles except as provided in Section 26-A, Chapter 22.

#### FARM MACHINERY DEALERS:

(1) The first query is in regard to the use of transit plates for delivering self-propelled farm machinery.

Answer: Transit plates can be used on self-propelled machinery which fits the definition of a vehicle.

(2) Whether or not a farm machinery dealer can use a truck or a trailer to deliver implements of husbandry which are not self-propelled?

Answer: No, since the use of these plates is designed to aid the dealer in moving vehicles and not as an aid to his general business not related thereto.

(3) Can a farm machinery dealer use a transit plate for delivering home appliances?

Answer: No, for the same reason as stated in answer to question number 2 above.

(4) Can the transit plate issued to a farm machinery dealer be legally used on a service truck, used for servicing farm machinery and implements of husbandry sold by the dealer or repaired by him?

Answer: No, unless it is used for servicing a motor vehicle. (Section 29, 1)

(5) The fifth query is in regard to the use of transit plates on passenger automobiles and is the same type of question as referred to in the heavy equipment dealer opinion and the answer would be the same.

#### DEALERS IN MOBILE HOMES:

The questions regarding the use of transit plates by mobile home dealers will be dealt with in a separate memorandum.

It should be noted that these answers are to general propositions and are intended as guides in this area not as an answer to any factual situation.

In regard to your last two questions concerning (1) whether or not the board has authority to limit the use of transit plates, there appears to be two limitations within the statute itself, Section 26-A provides that the various listed businesses for the purpose of movement on highways of such vehicles owned or controlled by them may be granted a transit plate. The last sentence of paragraph 1 of Chapter 26-A provides that the qualification that in such businesses the movement of motor vehicles is an ordinary and usual incident to the operation of such business. It further states in Section 26-A in no event shall any plates issued under this section

be used in lieu of registration plates issued under sections 13-20. Section 29 limits and defines the use of dealer or transit registration plates. Section 26-A provides that the Board has authority to prescribe reasonable limitations to the use of transit plates. It would appear that this authority must be within the framework of the law in that the Board has no authority to grant greater rights than those set forth under the statute, but may limit them in particular circumstances.

(2) The last query is whether or not the Board can limit the use of transit plates to passenger vehicles and trucks used in connection with the transit holder's business.

Answer: The answer to this question appears to be stated in Section 26-A as follows:

“. . . provided that the movement of motor vehicles is an ordinary and usual incident to the operation of such business.”

This section further states that the transit plates cannot be used in lieu of regular registration which has been previously set forth. It is my opinion that the authority to issue transit plates is limited in nature—not to a particular enumerated business, but for the free movement of motor vehicles as set forth in the answers.

GEORGE A. WATHEN  
Assistant Attorney General

July 22, 1960

To: Colonel Robert Marx, Chief of Maine State Police

Re: “Penny Pitch”

We have been asked to give you an opinion as to whether or not the game “Penny Pitch” as carried on at the fairs sponsored by local P.T.A. organizations, is lawful.

Penny Pitch can be described as a game whereby children pitch or toss pennies onto a board covered with squares the approximate size of a penny. If the penny finally comes to rest completely in the square, then the thrower receives a prize; otherwise, he loses his penny.

If the prizes given at such game can be won with what is described as by the skill of the pitcher rather than by chance, the game is probably not gambling. The rule appears to be that if a game predominantly is one of chance, then it is gambling, and if it is predominantly one of skill, then it is not gambling. Whether or not a game consists predominantly of skill or predominantly of chance is a question of fact which would have to be decided by the officer observing the game. If he believes, giving due regard to all facets of the problem, the size of the square, the distance which the penny is pitched, etc., that chance predominates, then he would be justified in having the court finally determine if such game is gambling.

JAMES GLYNN FROST  
Deputy Attorney General