

MAINE STATE LEGISLATURE

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April 4, 1963

Senator Ralph W. Farris, Jr., Chairman

Judiciary Committee

Wayne B. Hollingsworth, Assistant

Attorney General

Authority of Police Officers to Stop Vehicles

You ask for an opinion as to the constitutionality of the following paragraph of C. 22, § 153, R. S. 1954, as amended, which states:

"All police officers in uniform may at all times, with or without process, stop any motor vehicle to examine identification numbers and marks thereon, raising the hood or engine cover if necessary to accomplish this purpose, and may demand and inspect the driver's license, registration certificate and permits." (Emphasis added.)

We must answer that the above-quoted paragraph is violative of Article I, § 5, Constitution of Maine, and the 4th Amendment to the United States Constitution, as incorporated by the "due process" clause of the 14th Amendment. See Weeks v. U. S., 232 U.S. 383; Wolf v. Colorado, 338 U.S. 25; Elkins v. U. S., 364 U.S. 206; Mapp v. Ohio, 367 U.S. 343. The practice of stopping motor vehicles for a "routine check" is illegal and violates the guarantees of freedom from unreasonable searches and seizures secured to the people by both the United States Constitution and the Constitution of Maine.

Historically, the philosophy of law enforcement, and the courts generally, had been that it was of paramount importance to stop crime at all costs, regardless of the fact that innocent persons were sometimes caused delay, embarrassment, and even public chastisement because of the over zealousness of some enforcement officers. The courts, over the last fifty years, have critically reappraised this approach to the fighting of crime, and have consistently reaffirmed the fact that the constitutional rights of the individual are paramount, and the expulsion of crime secondary to the rights of the individual. Among these constitutional rights is the prohibition against unreasonable searches and seizures. The 4th Amendment to the United States Constitution states:

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"Searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The 14th Amendment to the United States Constitution states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, § 5, Constitution of Maine, states:

"Unreasonable searches prohibited: search warrants. The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures: and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause -- supported by oath or affirmation."

The law of search and seizure relating to automobiles is little different from the law governing search of the person or fixed premises. As in the case of fixed premises, a search warrant is an absolute necessity in searching an automobile. A search without a warrant and not incidental to a valid arrest, is a general search. Probable cause must exist to justify the

issuance of a search warrant for an automobile (U. S. v. Spears, 287 F. 2d 7). The United States Supreme Court has recognized the fact that obtaining a warrant to search a moving automobile is farcical at best, and an exception has been made to this one instance. An enforcement officer, if he has probable cause to believe a crime has been, or is being committed, may search an automobile without first obtaining a warrant. This exception is to be narrowly construed, and in no instance may the driver (or passengers) be searched unless he (they) are first arrested and searched as an incident to a lawful arrest. (See Carroll v. U.S., 367 U.S. 132; Brinegar v. U.S., 338 U.S. 100; Henry v. U.S., 361 U.S. 98; Contreras v. U.S., 292 F. 2d 61.)

If an enforcement officer has probable cause to believe a motor vehicle is in fact stolen, he may proceed to stop the vehicle and examine the serial numbers without a warrant, or without the requirement of first having placed the operator under arrest. He cannot, however, go any further.

To arbitrarily stop a motorist on a "routine check", where the officer has no probable cause to believe a violation is being committed, is in fact an illegal arrest. The elements of arrest are, generally:

1. Intent to arrest
2. Under real or pretended authority
3. Accompanied by seizure or detention of the person
4. Which is so understood by the person arrested

(See 6 C.J.E., Arrest § 1; 5 Am. Jur. 2d, Arrest § 1.)

Under a set of facts comprising a "routine check", all of the elements of an arrest are present.

First - The officer's intent to seize or detain the vehicle operator is made manifest by his direction to such operator to stop.

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Second - The officer's uniform, possibly coupled with his police vehicle, gives ample notice of the officer's assumption of authority, real or pretended.

Third - When the motorist stops in compliance with the direction of the peace officer, it cannot be denied that the former is in fact, detained.

Fourth - When the motorist submits to the direction of the uniformed officer to stop, he must have understood that he was detained under authority of law, or else he would be free to continue on in disregard of the officer's signal. (See Opinion of the Attorney General of Washington, AGO 59-60 No. 88 (10 Dec. 1959).) See also: Webster v. State, 96 Okla. Cr. Rep. 44, 248 P. 2d 646 (1952); Robertson v. State, 184 Tenn. 277, 198 S.W. 2d 633 (1947); City of Miami v. Aronovitz, 114 So. 2d 784 (1959).

There is no denying the fact that indiscriminate stopping of motor vehicles either singularly, or at an arbitrary road-block, does uncover violations of the law that would have gone unnoticed. The learned Justice Lehman of the Court of Appeals of New York, in an address before the New York Bar Association stated:

"Suggestions that courts should not hamper public officers by restricting them to the use of lawful methods seem to many of our citizens in accord with practical common sense. Our boasted guarantees of liberty, it would seem, are so precious that they must be kept for special occasions and not subjected to the wear and tear of daily use. Not so may the courts treat these guarantees. In a court of law no argument based on expediency can ever justify a lawless invasion of a legal right." (Emphasis added) See also:

**Iowa Law Review, Summer 1961, Random
Road Blocks and the Law of Search and
Seizure.**

If an enforcement officer has probable cause to stop a motor vehicle he may then proceed to verify the operator's license and registration. In this respect, see the dictum in Rios v. U. S., 364 U.S. 253, 4 L. ed 2d 1688, 80 S. Ct. 1431 (1960), and Commonwealth v. McLeary, 186 N.E. 2d 459 (Mass. Adv. Sheets, Jan. 2, 1963).

Roadblocks are necessary and proper under certain instances. There are limitations, however:

1. The authority must not be arbitrarily or capriciously used. Wirtz v. Hordell (Cal.) 85 A. 2d 497 (1948); Kerney v. State (Fla.) 50 S. 2d 155 (1952).
2. The authority must not be used as a subterfuge. U. S. v. Ruskola, 23 F. 2d 696 (1928); Gox v. State (Tenn.), 181 S.W. 2d 318 (1943); Smith v. State (Tenn.), 126 S.W. 2d 390 (1945); Murphy v. State (Tenn.), 256 S.W. 2d 979 (1953).

For the same reasons as herein stated, the last sentence of paragraph 3, C. 22, § 153, is found to be unconstitutional. (See enclosed re-draft of C. 22, § 153, R. S. 1954, as amended).

In conclusion, C. 22, § 153 violates both the state and federal constitutions in that it authorizes arbitrary arrests, not based on probable cause.

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