

# MAINE STATE LEGISLATURE

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112  
May 6, 1963

Norman K. Ferguson  
Senator, Oxford County  
Committee on Natural Resources  
Senate Chambers  
State House  
Augusta, Maine

Dear Senator Ferguson:

We are in receipt of your request dated 3 May 1963, asking for an opinion as to the constitutionality of L. D. 1332, "An Act Establishing a Forest Products Marketing Law." We are of the opinion, for the following reasons, that the bill, if enacted into law, would be unconstitutional.

1. Section 1 states, inter alia:

". . . Any wood cut in Maine for commercial purposes shall be done in accordance with a license issued by the Forest Commissioner, and the timber cut shall be wholly or partially worked within the State of Maine. Timber is wholly or partially worked within the meaning of this chapter when it shall have undergone all treatments and manufacturing processes and after it has gone through all the stages of transformation necessary to make such timber ready for the use for which it was ultimately destined, in such a way that its products shall have acquired the final form in which the merchandise is to be delivered to the consumer."

The foregoing section is violative of Article 1, section 8, United States Constitution, which states:

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"The Congress shall have power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imports, and excises shall be uniform throughout the United States; . . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Section 1 is also violative of the 5th and 14th amendments to the United States Constitution, and Article 1, section 6, Constitution of Maine. These sections all deal with the taking of property without due process of law.

2. Section 2 deals with permits, their procurement, and the fees to be set. This section goes beyond the police power of the Legislature, inasmuch as there is no rational basis for the licensing. The section is so vague and ambiguous as to be violative of due process of law, and puts an unconscionable degree of power and discretion in the Forest Commissioner and the "marketing board." This section is further violative of the equal protection clause of the 14th amendment to the United States Constitution.

3. Section 4 is in violation of the due process clause of the 14th amendment to the United States Constitution. The Forest Commissioner, with the approval of the marketing board, can arbitrarily stop issuing permits if he feels that the "industrial, commercial or economic conditions" of the state so warrant. Once again, this is not a rational basis under which the police power of the Legislature can be invoked. As such, this section is in violation of both the due process and equal protection clauses of the 14th amendment.

Time does not permit a more comprehensive analysis of this bill and its constitutional implications.

Sincerely yours,

Wayne B. Hollingsworth  
Assistant Attorney General