

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

"The second role, and one not generally appreciated, is that of supplying the plants with calcium and magnesium. These two elements are essential for plant growth and we visualize that calcium generally, and magnesium when dolomitic limestone is used, are provided to the plant through the use of lime. On this basis, the material certainly has some fertility value.

"Technically speaking, any material added to the soil for the purpose of providing plant food is a fertilizer."

Your attention is also called to Chapter 32, Section 215-C, subsection I, R. S. 1954, as amended, the Maine Commercial Fertilizer Law. Under Section 215-C, subsection I, lime is defined thusly:

"I. The term 'agricultural lime' means any substance that contains calcium or magnesium intended or sold for *fertilizing purposes* or for neutralizing soil acidity, and shall include gypsum if intended for agricultural use." (Emphasis added).

In the same section (215-C) the following definitions are also found.

"IV. The term 'commercial fertilizer' includes mixed fertilizer or fertilizer materials or both.

"VII. The term 'fertilizer material' means any substance containing nitrogen, phosphorus, potassium or any recognized *plant nutrient element* or compound which is used primarily for its plant nutrient content. . . ." (Emphasis added).

In conclusion, there is little doubt that lime is fertilizer, if intended for use in the soil, within the meaning of Chapter 48, Section 29-I, subsection I.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General

May 27, 1963

To: Honorable William R. Cole
Senate Chamber
Augusta, Maine

Dear Senator Cole:

Re: L. D. 1253 — An Act Relating to Weight of Commercial Vehicles

The question asked concerning this Legislative Document may be phrased as follows:

May a truck carry more than the maximum limit set by section 109 without penalty?

Section 111 sets the penalties for violation of section 109, which in turn sets a schedule of maximum allowable weights.

The third paragraph of section 11 provides in part:

"\$20 and costs of court when the gross weight is in excess of the limits prescribed in section 109, provided such excess is intentional and is 1,000 pounds or over but less than 2,000 pounds, and the above provision as to intent shall apply only to such excess as is less than 2,000 pounds."

The above-quoted portion of section 111, as far as it relates to excesses under 1,000 pounds, in effect grants a tolerance. There is no penalty for carrying a load in excess of the limits set in section 109 as long as the overload does not exceed 1,000 pounds. There being no penalty, there is no violation or offense.

As to excesses over 1,000 pounds but under 2,000 pounds, there has to be the element of intent. An accidental or unintentional overloading carries no penalty. There being no penalty, there is no violation or offense.

When the excess is between 1,000 and 2,000 pounds and the truck is deliberately or intentionally overloaded, there is a penalty. Such overloading then becomes a violation or offense.

From all this we must conclude that exceeding the maximum weights set forth in section 109 is not, by itself, a violation until the excess is 2,000 pounds or over.

"A criminal act is one which in some way or other subjects the actor to punishment."

Broom's Phil. of Law S 613.

"A crime may be provisionally defined to be 'an act which the State absolutely prohibits, or a forbearance from an act which the State absolutely commands to be done, the State making use of such a kind and measure of punishment as may seem needed to render such prohibition or command effectual.'"

Amos. Jur. (London, 1872) 286.

"The criminal law is that part of the law which relates to the definition and punishment of acts or omissions which are punished as being . . ."

1 History Crim. Law 3.

The text book writers appear to agree that punishment is an integral part of the definition of a crime. Without punishment an act cannot be considered a crime or of a penal nature. *Corpus Juris Secundum Criminal Law S. 24 (3), 25*. See also: *Mossew v. U.S. (C. C. A.) 266 F. 18*; *State v. Fair Lawn Service Center, Inc. (N. J.) 120 A 2d 233*; *Redding v. State (Neb.) 85 N.W. 2d 647*; *McNary v. State (Ohio) 191 N.E. 733*; *State v. Mandel (Ariz.) 728 P. 2d 413*; *DeVeau v. Braisted (N. Y.) 174 N.Y.S. 2d 596*.

Our court in *May v. Pennell, 101 Maine 516 at 519* said:

"and the word 'crime' or 'offense' as ordinarily used in legislative enactments, by text writers on criminal law and in the practical administration of it by the courts, uniformly signifies a public wrong which subjects the perpetrator to legal punishment."

This office cannot advise you what effect the increase in maximum gross weights would have on the Federal Aid Highway program. This determination must be made by the proper federal officials.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General