

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

August 15, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Soldiers' and Sailors' Civil Relief Act

Your request of August 12, 1963, received for an opinion on the question of a nonresident serviceman stationed in Maine owning a house trailer on April 1 and not paying an excise tax or personal property tax under the Maine statute.

Chapter 22, section 15-A provides that "No motor vehicle or *house trailer* shall be registered under this chapter until the excise tax or personal property tax has been paid in accordance with Chapter 91-A, sections 124 and 126." This was enacted P. L. 1959, Chapter 308, section 3.

You request me to review Mr. Bailey's opinion of November 14, 1956, and let you know whether I agree with that opinion and whether I agree with your understanding or interpretation of that opinion.

In regard to the opinion of Mr. Bailey of November 14, 1956, I note that he states that the "Federal Law suspends the state law while the state law exempts certain vehicles and that is respectable argument for the procedure which is already in practice."

You have submitted the request of Mr. Birkenwald for a review of the opinion of Mr. Bailey of 1956, and a copy of Bulletin No. 6 of 1962, and I am of the opinion that your understanding and interpretation of the statute and the opinion of Mr. Bailey are correct, and section 5, Chapter 304, P. L. 1963, takes care of this situation where it provides that where a property tax is paid in accordance with this section and later registration of the vehicle is desired, a personal or real estate receipt shall be accepted by the registering agency in lieu of an excise tax receipt, provided that such tax receipt contains sufficient information to identify the vehicle.

It is our opinion that if the nonresident serviceman does not excise his house trailer in case it was in Maine on April 1st and the personal property tax is committed he would be subject to the personal property tax and not the excise tax.

Chapter 91-A, section 126 II House Trailers. "A. If paid prior to April 1st or if the house trailer is acquired or is brought into this State after April 1st the excise tax shall be paid in the place where the trailer is located" and section 127 of Chapter 91-A exempts from personal property tax "any vehicle owner who has paid the excise tax on his vehicle in accordance with sections 124 and 126 shall be exempt from personal property taxation of such vehicle for that year."

It is our opinion that the Soldiers' and Sailors' Civil Relief Act does not apply in the case of the serviceman paying a fee or tax to place a trailer on the public highway in Maine.

RALPH W. FARRIS

Assistant Attorney General

August 19, 1963

To: Colonel Robert Marx, Chief, Maine State Police

Re: Clarification of Section 113 B, Chapter 22

Facts and Question:

In your memo of August 7, you have asked for a clarification of the words "acting jointly" as used in R. S. 1954, chapter 22, section 113 B.

Answer and Reasons:

A proper interpretation of the words "acting jointly" would indicate a meeting of the three units involved and a decision by all three to take some specific action.

Section 113 B provides that "the State Highway Commission, the Secretary of State and the Chief of the State Police, *acting jointly*, shall have authority" (emphasis supplied) to take certain specified actions.

In *Reclamation Dist. No. 3 v. Parvin* (Cal.) 8 P. 43, the court said:

"The statute (section 33) required the commissioners to 'jointly view and assess upon each' The word 'jointly' qualifies the words 'view' and 'assess,' but it means only that the three commissioners, acting jointly or together, shall view and assess, etc."

Applied to the present situation this would mean that the Highway Commission, the Secretary of State and the Chief of the State Police should meet and make their decisions.

The case of *White, et al. v. Powell, et al.* (Ala.) 20 So. 2d 467, provides the answer to how a decision should be reached.

An Alabama statute provided for the appointment of probation officers certified by the state department of welfare. They were to be paid "a reasonable salary to be determined by the judge, the advisory board, or county board of public welfare and the court of county commissioners, board of revenue, or other governing body of the county, *acting jointly*." (Emphasis supplied).

"The power of fixation conferred is statutory and limited and will be strictly construed. It is conferred, as to Walker County, on the county board of revenue as such, and not on the individual members of the board. The same is true as to the board of public welfare, and the statute requires the fixation to be made by the judge of the juvenile court, the county board of public welfare, and the board of revenue 'acting jointly.' Otherwise stated, the statute for this limited purpose creates three units, consisting of the judge, the county board of public welfare, and the board of revenue, each unit having one vote, and leaves to each of said boards to determine according to its own rules what vote it will cast.

"The word 'acting' here used is a participle. In its capacity as an adjective it modifies the noun 'judge' and the collective nouns 'county welfare board' and 'board of revenue,' and in its capacity of a verb, in turn, it is modified by the adverb 'jointly,' connoting a legislative intent that the three units shall act in unison to the end of fixing the amount unanimously."

Hence, the Highway Commission has one vote, the Secretary of State has one vote and the Chief of the State Police has one vote. All must agree. A majority vote is not sufficient.

You have further inquired if the designated departments may appoint a representative to act for them.

Answer:

No.

Chapter 23, section 3, in the last sentence states:

“The chairman . . . but all policy decisions of the commission must be by a majority of its total membership.”

Hence, it follows that the Highway Commission cannot delegate to an employee authority to determine its policy relative to highway speeds.

Chapter 15, section 1, provides that “subject to the approval of the governor and council, the chief may designate a commissioned officer of the state police to act as his deputy.”

The Constitution, Article V, Part Third, Section 2, provides that “the records of the state shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable.”

Chapter 21, section 1, only says “he and his deputy shall also receive such actual traveling expenses incident”

In no place in the statutes has the legislature defined the duties of the Deputy Chief of the State Police or the Deputy Secretary of State. Lacking such legislative designation, neither may substitute for the official named in section 113 B.

GEORGE C. WEST

Deputy Attorney General

September 5, 1963

To: Paul A. MacDonald, Secretary of State

Re: Interpretations of Motor Vehicle Dealer Registration Board Amendments (Chapters 296 and 414, sections 3 A-B-C-D and E, Public Laws 1963)

Facts:

Chapters 296 and 414, sections 3 A-B-C-D and E, Public Laws 1963 rewrite, by extensive amendments, chapter 22, sections 21 to 29, inc., known as the Motor Vehicle Registration Board law. As a result of these amendments certain questions have arisen. Each question will be stated and answered separately.

Question No. 1:

Can the holder of a Transporter plate, who is a dealer in mobile homes, legally use the Transporter plate on the towing vehicle, or must such towing vehicle be registered in the usual manner?

Answer:

No.

Reason:

Transporter plates are for the use of persons who in the “ordinary and usual incident to the operation of their businesses” transport and deliver vehicles. “Instead of registering each vehicle owned” by such persons, transporter plates are “to be used for the transportation and delivery of such vehicles.” The legislative intent is to allow such vehicles on the highways without individual registration but with a plate duly authorized by an appropriate authority. It is the purpose of section 26-A to provide plates for such vehicles when being transported and delivered.