MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied

(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.

Another view of section 26-A indicates that two types of vehicles are covered by transporter plates:

1. Self-propelled vehicles. These are "heavy equipment" or "special mobile equipment" as defined in section 1: farm machinery; finance companies and banks (repossessed motor vehicles).

2. Non-self-propelled vehicles. These are mobile homes; trailers; semi-trailers; junk dealers (vehicles wrecked and unable to move by their own power).

Hence, it follows that transporter plates are intended for use on such vehicles themselves. Otherwise each vehicle would have to be registered separately. These plates are not intended for use on the towing, transporting or conveying vehicle. The towing vehicle must be registered in the usual manner.

Question No. 2:

Can a Dealer legally operate a wrecker on Dealer plates:

a. within a 15 mile radius?

b. in excess of a 15 mile radius? — assuming in both cases that compensation is received, either in the form of a fixed charge or as an inclusion in a bill for repairs.

c. Would it be proper for the Maine Automobile Dealer Registration Board, by rule and regulation, to limit the use of Dealer plates on wreckers?

Answer:

a. Yes.

Reason:

A wrecker is a motor vehicle within the definitions in section 1, of chapter 22. Hence, a wrecker may be operated on dealer plates within a radius of 15 miles from the place of business as registered.

Answer:

b. Yes and No.

The reason for the question is a possible conflict with Public Utility laws relating to motor vehicles transporting property for hire. That law requires a Public Utility registration and plate for motor vehicles transporting property for hire beyond a 15 mile radius from the place of registration. When a PUC registration and plate is required the motor vehicle must have an individual registration. Dealer plates are not proper on a wrecker required to have PUC registration and plates.

There is an exception to the PUC law. If a wrecker picks up a disabled motor vehicle beyond the 15 mile limit and returns it for repairs to the garage from which the wrecker is registered, a PUC registration and plate is not required.

Answer:

c. It is not possible to answer this question. It is a very general question. Section 26 provides authority for the Board to make rules and regulations. Rules and regulations within the limits stated therein and within the statutory limits of the use of transporter plates set forth in section 29 would be permissible.

The only way the question can be answered is for the Board to draft proposed rules and regulations, then submit them to this office as required

by chapter 20-A. It could then be determined if specific rules, regulations or standards are proper.

Question No. 3:

Assuming a registered vehicle is being towed by a dealer or holder of Transporter registration and a standard garage insurance policy is in effect, would the Dealer be covered by the policy in case of injury or damage caused by the towed, *registered* vehicle?

Answer:

Maybe.

Reason:

There is a standard garage liability insurance policy. Such policy will cover the situation outlined in the question provided the holder has exercised the option and paid for the coverage. Some holders have failed to request the coverage and have been somewhat embarrassed when reporting such an accident to the insurance company.

Question No. 4:

Could the above-mentioned Dealer Board legally promulgate a rule and regulations, establishing the length of time a specific vehicle could be operated on Dealer plates?

Answer:

No.

Reason:

Section 26 provides for the granting on an annual basis of dealer plates instead of registering "each motor vehicle owned or controlled" by a dealer. The legislative intent appears to be that a dealer may use for 1 year such plates granted to him.

The use of such plates on a "motor truck, tractor or trailer registered under section 26" is limited by section 29. Apparently no limitation of use is made for passenger motor vehicles. There is nothing in the law to indicate any intention by the legislature to so limit the use of dealer plates on passenger cars. It would not be proper for the Board to invoke a limit.

Question No. 5:

Does "heavy equipment" as used in Section 26-A of chapter 296 of the Public Laws of 1963 include trucks, regardless of size or weight?

Answer:

No.

The word "truck" and the phrase "heavy equipment" are not defined in chapter 22. There is a definition of a "motor truck" as "any motor vehicle designed and used for the conveyance of property." Generally, by common usage, the phrase "heavy equipment" is understood as bulldozers, back-hoes, graders and such mechanical devices used in construction work.

The definition of "special mobile equipment" in section 1 would more nearly approximate "heavy equipment." Hence, it would follow that a "motor truck," regardless of weight, would not be classified as "heavy equipment."

Question No. 6:

Would it be permissible for a farm machinery dealer or heavy equipment dealer who sells trucks as part of his operation, to hold dealer plates

for the truck phase of the business and Transporter plates for the movement of other self-propelled machinery?

Answer:

Yes.

There is nothing in the law to prevent the issuing of dealer and transporter plates to one person. If a person qualifies under both sections 26 and 26-A, he is entitled to both types of plates.

GEORGE C. WEST
Deputy Attorney General

September 19, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Residence for School Purposes; Tuition Privileges

We acknowledge your memorandum of August 2, 1963.

Facts:

A physician presently employed by the United States Government as a doctor attached to American embassies abroad and who presently is serving in Saigon, owns a house in Bethel, Maine where, formerly, he practiced medicine. This physician is assigned to foreign stations for two-year periods. During his absence from Bethel, the doctor rents his house and pays the taxes on it. Of the doctor's five children; two are in attendance at college; two now are enrolled at Gould Academy in Bethel; and the remaining child is with the parents in Saigon. Doctor says that he considers Bethel as his legal residence.

Bethel causes certain of its pupils to attend Gould Academy pursuant to tuition arrangements allowed by statute.

By law this State, through the Commissioner of Education, reimburses the administrative units (to the extent of ½ of that amount paid by the administrative units) for tuition expenditures *R. S. 1954, c. 41, § 108.* Section 8 indicates that the State is to reimburse the administrative unit for tuition expense which the latter "shall have been required to pay."

Question:

The question you posed: "Are his children eligible for tuition payment by the Town of Bethel during the time he is serving abroad?" calls for this office to formally express itself upon a local matter. Respectfully, we reframe your question: Should the State reimburse the Town of Bethel for the tuition expense paid pursuant to the given facts?

Answer:

Yes.

Reason:

If, either (1) the tuition has not been paid by the administrative unit, or (2) if paid, the amount was not required to have been paid, the State is to make no indemnification. *R. S. 1954, c. 41, § 108.* What can be said is that in the first instance there is nothing to indemnify and in the second instance the administrative unit is not entitled to ask for indemnification. Thus, the query is whether the Town of Bethel was required to pay for the tuition of the doctor's two children attending Gould Academy.