

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

The above-quoted portion must be read with the supplied emphasis. It is most important to the answer of the proposed question.

Any ticket, certificate, slip, bill or token must purport or be designed to guarantee or assure the holder a chance of drawing or obtaining a prize drawn in a lottery. It must be admitted that the New Hampshire Sweepstakes is a lottery. But does the paper possessed by the purchaser of a chance purport to, or is it designed to, guarantee or assure the holder of a chance of obtaining a prize?

The wording on the paper is self-explanatory. It is a mere acknowledgment of purchase and "need not be retained or presented for payment." The New Hampshire Sweepstakes Commission holds possession of all sweepstakes tickets.

Therefore, the mere possession of a New Hampshire Sweepstake acknowledgment, receipt (or whatever it may be denominated) does not constitute a breach of Maine law.

FRANK E. HANCOCK  
Attorney General

March 27, 1964

To: Governor John H. Reed

Re: Appointment, Motor Vehicle Dealer Registration Board.

You have asked about the legality of appointing a certain individual to the Motor Vehicle Dealer Registration Board.

The Board is composed of "5 members, 2 of whom shall be new motor vehicle dealers, 2 of whom shall be used motor vehicle dealers and one of whom shall be a person other than a motor vehicle dealer." *Ch. 22, § 21.*

There is a vacancy to be filled by a "used motor vehicle dealer." The person in question is President and a Director of a Maine corporation having a new car franchise. He is also Treasurer and a Director of a Maine corporation selling used cars exclusively. This information is obtained from the corporation records of the Secretary of State's office.

The legislative intent is easily ascertainable to be that of an equal number of persons representing new car and used car dealers with a non-dealer holding the balance. To allow an executive officer of two corporations, one selling new cars and one selling used cars, to be appointed would create an unbalanced board. Such a person would be trying to serve two masters which is bad.

Such a person is not eligible for appointment to the Maine Motor Vehicle Dealer Registration Board.

GEORGE C. WEST  
Deputy Attorney General

April 2, 1964

To: Marion E. Martin, Commissioner, Labor and Industry

Re: Power and Duty of Board of Construction Safety Rules and Regulations to Adopt Rule

Facts:

The Board of Construction Safety Rules and Regulations has requested an interpretation of that portion of Public Laws, 1955 c. 462, § 5 establishing the Board's duties and powers.

Question:

Can the Board of Construction Safety Rules and Regulations adopt a rule requiring that anyone doing "electrical work" must be a licensed electrician?

Answer:

No.

Opinion:

The portion of P. L. 1955 c. 462, § 5 establishing the duties and powers of the Board of Construction Safety Rules and Regulations is found in R. S. c. 30, § 88-C, as amended, and reads in part:

"The board shall formulate and adopt reasonable rules and regulations for safe and proper operation in construction within the state. The rules and regulations so formulated shall conform as far as practicable to the standard safety codes for construction. . . ."

"Electrical work" falls within the definition of construction. The portion of P. L. 1955 c. 462, § 5, as amended, defining the terms of that statute is found in R. S. c. 30, § 88-B, as amended, and reads in part:

"Definitions. — Under sections 88-A to 88-D, the following words shall have the following meanings:

. . . .

"IV. Construction. — 'Construction' shall mean and include forming, erection, demolition, dismantling, alteration, repair and moving of buildings and all other structures and all operations in connection therewith; and shall also include all excavation, roadways, sewers, trenches, tunnels, pipe lines and all other operations pertaining thereto. The term 'construction' shall apply to persons and corporations engaged for hire, or by virtue of a contract. The term 'construction' shall not apply to construction for self use where the number of persons engaged for hire, or by virtue of a contract, does not exceed 5. . . ."

While there could be argument that "forming, erection, demolition, dismantling, alteration, repair and moving" are not terms that include "electrical work"; a fair interpretation of the phrase "and all operations in connection therewith" would include "electrical work." A strict interpretation of the words "excavation, roadways, sewers, trenches, tunnels, pipe lines" might exclude "electrical work"; but a reasonable interpretation of the subsequent phrase "and all operations pertaining thereto" would bring "electrical work" within the purview of the definition of construction.

The Board therefore has the power and duty to formulate and adopt rules and regulations for "electrical work" that relate to safe and proper operation provided the rules are reasonable, with the reservation that the rules and regulations do not apply to "electrical work" for "self use where the number of persons engaged for hire, or by virtue of contract, does not exceed 5." *R. S. c. 30, §88-B, IV, supra.*

The Board's power and duty is limited in that it may not establish rules or regulations limiting, expanding, or contravening State of Maine statutes. The Maine Legislature pursuant to R. S. c. 82, as amended, has spoken as to the requirements for the licensing of electricians. The Legislature is the sole body which has the power to modify the criteria in the statutes. Therefore, the promulgation of a rule by the Board of Construction Safety Rules and Regulations requiring that anyone doing "electrical work" must be a licensed electrician is clearly outside the administrative powers and duties of the Board.

JEROME S. MATUS

Assistant Attorney General

April 2, 1964

To: Joseph A. P. Flynn, Director of State Fire Prevention

Re: Mechanical Rides — Purview of Definition

Facts:

The Director of State Fire Prevention has requested an interpretation of the definition of "mechanical ride" as set forth in R. S. 1954, C. 100, § 69-A.

Question:

Do motorized Go-Karts and motorized Snow Travelers, utilized in motor vehicle races, come within the meaning and intent of "mechanical ride" as defined in R. S. 1954, c. 100, §69-A?

Answer:

No.

Opinion:

Motorized Go-Karts and motorized Snow Travelers utilized in motor vehicle racing are not "mechanical rides" within the intent and meaning of R. S. 1954, c. 100, § 69-A which states:

"'Mechanical ride' means a power-operated device by which a person is conveyed, where control by the rider over the speed or direction of travel is incomplete. It does not include a vehicle or device the operation of which is regulated as to safety by any other provision of law except a municipal ordinance under Chapter 90-A, section 3."

Although it is arguable, motorized Go-Karts or motorized Snow Travelers are not power-operated devices within the context of R. S. 1954, c. 100, § 69-A to 69-F. "Power-operate" is defined as follows:

"To operate (a machine of thing) by mechanical power."

Webster's International Dictionary, 2nd Ed. Unabridged, p. 1937.

In the context of the statute, a power-operated device must have a source of power from a mechanism outside the device in which the person is being conveyed.

However, even if motorized Go-Karts or motorized Snow Travelers used in motor vehicle racing were considered power-operated devices, they would still be outside the purview of the definition of "mechanical rides." In every