

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

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

instance there would be at least one rider who has full control over speed and direction of travel, namely the operator or driver. Lack of full control by a rider is a prerequisite for a "mechanical ride."

JEROME S. MATUS

Assistant Attorney General

April 7, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility of an Administrative Unit for Educable Children

Facts:

A municipality has adopted a regulation that pupils must be seven years of age in order to be eligible for admission to an educable class. The reason given by the administrative unit for the promulgation of such a regulation is that the school officials feel that such children are too young, mentally, to profit from special class education.

An educable child who is over five years of age, but who is less than seven years old, is in attendance at an approved private school which conducts classes for exceptional or handicapped children, including classes for educable children. The child's parents are requesting that the municipality pay tuition to the private school. Tuition is an item subsidized by the State.

Question:

Whether the administrative unit's regulation is valid so that the entity avoids payment of tuition?

Answer:

No.

Reason:

Applicable statutory provisions are:

*"Sec. 207-A. Purpose.* It is declared to be the policy of the State to provide, within practical limits, equal educational opportunities for all children in Maine able to benefit from an instructional program approved by the State Board of Education. The purpose of sections 207-A to 207-I is to provide educational facilities, services and equipment for all handicapped or exceptional children below 21 years of age who cannot be adequately taught with safety and benefit in the regular public school classes of normal children or who can attend regular classes beneficially if special services are provided. Special classes in public schools are to include educable children only."

*"Sec. 207-B. Definitions.* The term 'handicapped or exceptional child' shall mean any child under 21 years of age able to benefit from an instructional program approved by the State Board of Education whose parents or guardian maintains a home for his family in any administrative unit within the State, and whose educational needs cannot be adequately provided for through the usual facilities and services of the public schools, because of the physical or mental deviations of such child."