

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

There can be no other conclusion than that used or new car dealer plates cannot be used on motorcycles.

GEORGE C. WEST

Deputy Attorney General

July 30, 1964

To: Paul A. MacDonald, Secretary of State

Re: Registration of Tractor Unit owned by nonresident

Facts:

A Massachusetts corporation with vehicles registered in Massachusetts, operates an interstate trucking business from a point outside the state to a point inside the state and return.

On occasion, however, in order to keep the same driver on the same tractor, a driver will bring a semi-trailer load from Presque Isle, for example, to Portland, and meet a driver bringing a load of merchandise in from New York. They will switch semi-trailers and the Massachusetts registered tractor returns to Presque Isle with the semi-trailer load of merchandise that was picked up in Portland.

Question:

Is this operation of such an intrastate character as to require registration in Maine?

Answer:

Yes.

Opinion:

The applicable statutory reference is C. 22, s. 67. This section provides for reciprocity with those states which grant like privileges as determined by the Secretary of State. An exception is contained in subsection IV in this language:

"No truck, tractor or trailer owned, leased or operated by a nonresident shall be operated under this section in transportation of merchandise or material in intrastate commerce, nor in interstate commerce unless the point of actual receipt or delivery of any merchandise or material so transported is without the State. Except that a nonresident owned semi-trailer operated by a Maine registered power unit shall be permitted to transport merchandise or material in intrastate commerce."

Whether a given activity is "intrastate" commerce or "interstate" commerce has for years been the subject of many court cases. Hundreds of opinions have been written by hundreds of judges, state and federal. There is no clearly defined line that can be easily discerned by the human eye or mind. Each case apparently must be determined on its own facts and merits.

Here we are faced with a license problem. Licenses are privileges granted by the state. They are subject to change by legislative act. Each legislature may grant, withhold, limit, expand or rescind the privilege. Running through the legislative right to regulate motor vehicle licensing, however, is the thread of the federal power to regulate interstate commerce

and the corresponding lack of the right of the state to impede or stem the normal flow of such commerce. This thread may not be broken by state action.

In this particular case the thread would not be broken if the tractor owned by the nonresident and operated between points within the state were licensed in Maine. Under the last sentence of subsection IV the tractor, registered in Maine, can haul a semi-trailer in intrastate commerce.

The arrangement pictured in the facts is solely for the benefit of the nonresident owner. He could have the driver bring his rig from the north and simply swap over and drive the northbound rig back. He prefers, however, to have the driver use the same tractor within two points in the state.

See *Hunnewell v. Johnson*, 157 Me. 338 at 345 for statement:

"In the case before us the break in transit was not caused by exigencies over which the taxpayer had no control, but was purely for the convenience or business profit of the appellant."

Under these circumstances the tractor must be registered in Maine as it is engaged in intrastate commerce. In no way can it be said that the state is impeding or throwing up a barrier to interstate commerce.

GEORGE C. WEST

Deputy Attorney General

September 8, 1964

To: Keith L. Crockett, Executive Director of Education  
Division of Field Services

Re: Eligibility of Gymnasium Divider for School Construction Aid

Facts:

It is the intention of the school department of a Maine city to install a mechanical, folding partition in the high school gymnasium for the purpose of making two physical education teaching stations available for use at the same time, i. e., one for the boys, one for the girls. During major athletic events, the partition would be folded away to allow full use of the gymnasium.

Question:

1. Does the folding partition qualify for state construction aid pursuant to R. S., c. 41, § 237-H?
2. Would materials such as drapes, nets, etc. (of less permanent nature than a folding partition) be eligible for construction aid pursuant to R. S., c. 41, § 237-H?

Answer:

1. Yes.
2. Other materials would qualify for aid if their use provided an additional school facility. Each situation must be decided upon its own facts.

Reason:

The existence of the partition will allow plural use of the gymnasium. Because two physical education teaching stations will be made available for simultaneous use, one station for the boys and one station for the girls, there is created an additional school facility where, before, there existed but one facility.