

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.

See our May 16, 1963 opinion wherein we made reference to *State v. Cave*, 20 Mont. 468, 52 P. 200. *State v. Cave*, supra, defined "additional school facilities" as "facilities in addition to or beyond those already possessed." The case held that: "To provide, when reasonably necessary or convenient, more school rooms, is to furnish additional school facilities."

JOHN W. BENOIT
Assistant Attorney General

September 10, 1964

To: Harold E. Bryant, Consultant, Maine Potato Commission

Re: Use of Potato Tax Money

Facts:

A cooperative composed of a group of potato growers has been formed. It is one of several such cooperatives now in existence in the state. The latest cooperative has indicated that it will ask the Maine Potato Commission to pay its operating expenses from the potato tax.

Question:

May the Maine Potato Commission use potato tax money to pay operating expenses of a potato growers cooperative?

Answer:

No.

Opinion:

The answer to this question is found in R. S., Ch. 16 § 231. The section states the purposes for which potato tax money may be used. There are four purposes listed.

1. Collection of tax and enforcement of sections 222 to 223.
2. At least \$50,000 for investigating and determining better methods of production, shipment and merchandising of potatoes and for the manufacture and merchandising of potato by-products.
3. At least 25% of the money collected shall be used for the general purpose of merchandising and advertising Maine potatoes for food and seed.
4. Remaining funds may be used to carry out 2 and 3 above. Also, the commission may spend not over \$10,000 for the enforcement of the potato branding law.

It might also be pointed out that the potato tax is paid by all potato growers in the state. The use of the money is for the general benefit of all potato growers. It cannot be used for the benefit of a few growers.

In view of the wording of section 231 and the purpose of the tax, it would be improper for the Maine Potato Commission to use potato tax money for the operating expenses of any one cooperative.

GEORGE C. WEST
Deputy Attorney General