

MAINE STATE LEGISLATURE

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July 19, 1965

C. Wilder Smith, Deputy Commissioner

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Labor and Industry

Emery G. Beane, Jr., Assistant

Attorney General

Stuffed Toys

FACTS:

You have inquired whether Section 123 of Public Law 106 of 1965 authorizes issuance of a rule and regulation by your department that importers of stuffed toys are subject to the terms of the act, stating that "an importer is generally defined as any person who shall import from foreign countries or states materials, coming within the scope of the act, sold, distributed or given away in the State of Maine," which definition does not appear in the act.

QUESTION:

"Does this section (P. L. 1965, c. 106, sec. 123) permit the Department of Labor and Industry to issue a rule and regulation that importers of stuffed toys are subject to the terms of the act?"

ANSWER:

No.

REASON:

I am now given to understand that your question is intended to refer only to the application of Section 123 to the provisions found in Article 2 of Subchapter I-A of the Act, relating to registration of manufacturers. Within that limitation of the question without restating it, I answer as above for the reason that, in my opinion, notwithstanding the delegation of rule and regulation making power in Section 123 and Maine cases to the effect that delegated regulatory power under proper police power statutes may be quite liberally construed when the statute indicates clearly such a legislative intention based on determination of need for same in the interests of adequate enforcement for public health or safety, to promulgate a rule or regulation that importers, by any definition I have been able to find, come within the registration provisions which

are applied in the act only to manufacturers would clearly be to go beyond the legislative authorization. A restrictive rule or regulation by an administrative body certainly may not exceed the contemplated scope of the delegating legislation from which it is derived. This is not, of course, to say that importers are not subject to any other provisions of Chapter 106.

Emory G. Seane, Jr.
Assistant Attorney General

ESG Jr./eh