

MAINE STATE LEGISLATURE

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November 9, 1965

C. Wilder Smith, Deputy Comm.
George C. West, Deputy

Labor and Industry
Attorney General

Definition of Cushion

With your memo of October 11, 1965 you enclosed a sample swatch from a cushion designed for use primarily in motor vehicles. The material may be described as a mesh or net material covering a thin layer of solid material which in turn conceals a round spiral spring. The manufacturer labels the item as a "ventilated seat cushion."

QUESTION:

Is this item of merchandise a cushion as defined in 26 M.R.S.A. section 81, sub 3?

ANSWER:

Yes.

REASON:

26 M.R.S.A., section 81, sub. 3, states in its essential parts:

" 'cushion' shall mean any bag or case made of leather, cotton or other textile or plastic material, which is filled in whole or in part with concealed material, capable of use for sitting, sleeping, resting or reclining purposes. . . . " (The remainder of the definition is not pertinent to the question.)

A cursory reading of the definition and a literal reading of its wording would possibly justify the conclusion that the "ventilated seat cushion" is not a "cushion" as defined. After all, it is not a "bag or case" which is "filled . . . with concealed material" in a literal sense.

However, we must look beyond the mere words. We must look at the over-all statute and what the legislature sought to accomplish. This law is designed to protect the health and the economics of the public. Each article must bear a label or tag indicating whether the material inside the article is new or used. If used, the

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material must have been sterilized and disinfected. Such sterilizing and disinfecting must be by a process approved by the department. These requirements protect the health of the public as well as reasonably assuring a lower price range for cheaper goods.

Although the "ventilated seat cushion" may not be composed of "concealed" material as far as the purchaser's sight is concerned, it can be said that it is "concealed" so far as the purchaser's knowledge of whether it is made up of new or used components. We must decide that such "ventilated seat cushions" are "cushions" as defined by the statute.

George C. West
Deputy Attorney General

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