

MAINE STATE LEGISLATURE

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June 5, 1967

Marion E. Martin, Commissioner

Labor and Industry

Phillip M. Kilmister, Assistant

Attorney General

The Elevator Law, Section 435, Chapter 5, Title 26.

FACTS:

You have properly called to our attention a previous opinion of this Office written by Carl O. Bradford under date of October 21, 1963 and we wish preliminarily to refer to certain conclusions stated therein. In essence, the opinion of October 21, 1963 stated that a person employed by an elevator company who holds a certificate of authorization to inspect elevators maintained by the elevator company, may inspect elevators, not maintained by his company, for an insurance company on a fee basis. By the same token we believe that the reference opinion also affords a basis for concluding that an authorized inspector of an insurance company could inspect elevators for an elevator company on a contractual fee basis, thereby becoming an employee, and hence authorized inspector, of the elevator company in regard to the inspections performed. Without quoting at length the opinion of October 21, 1963 we never-the-less quote a section of said opinion which reads as follows: "The Legislature did not intend to establish the condition that, before a person can be licensed as an authorized elevator inspector, he must be exclusively employed as a full-time employee of an elevator company or an insurance company." As will appear in the main body of this opinion, we think that the Legislature has rather clearly stated that an authorized elevator inspector must be an employee of either the elevator company or insurance company for which he performs inspections. This initial conclusion largely answers the specific questions posed in your memo dealing with the following factual situation:

"Insurance companies enter into contracts with elevator companies for their authorized inspectors to inspect elevators insured by the insurance company but not maintained by the elevator companies."

QUESTION #1:

Is such an arrangement for inspection legal under this section?

ANSWER:

No.

QUESTION #2:

Is an authorized inspector, not an individual contractor, but employed primarily by an elevator company that holds a contract for the inspection of the elevators insured by the insurance company, an employee under the meaning of this Act an employee of the insurance company, the elevator company, or both?

ANSWER:

An employee of the elevator company.

QUESTION #3:

If an elevator is maintained by an elevator company, can the authorized inspectors employed by a competing elevator company inspect it for compliance with the Elevator Act?

ANSWER:

A qualified yes - but only if the authorized inspectors of the competing company establish an employment status with the company which maintains the elevators.

OPINION:

An insurance company or an elevator company may provide inspections for the elevators either insured or maintained by them through the use of their authorized inspectors. To be an authorized inspector, an inspector must be an employee of the company for whom the inspection is performed. Pursuant to the opinion of October 21, 1963 cited above, such employment may be established, when the authorized inspector of an elevator company, for a fee, contracts to perform an inspection for an insurance company and vice versa. By establishing employment with either an elevator company or insurance company, said inspector may qualify as an authorized inspector of the company for which his work is performed. If an insurance company or an elevator company desires to have elevators either insured or maintained by them inspected by someone other than one of their authorized employees however, said companies must have an inspection performed by a state elevator inspector, pursuant to the terms of 26 N.R.S.A. § 464 for which an inspection fee must be paid. A careful reading of the applicable statutory language governing the authority of authorized elevator inspectors does much to answer the three questions stated above:

26 N.R.S.A. § 435. Certificates of Authority.

"In addition to any state elevator inspector appointed under section 433, the commissioner shall, upon the request of any company licensed to insure against loss from elevator accident in this State, issue to any elevator inspector of such company a certificate of authority as an authorized elevator inspector, provided each such inspector before receiving his certificate of authority shall pass satisfactorily the examination provided for in section 434 or in lieu of such examination

shall hold a certificate as an inspector of elevators in a state that has a standard of examination equal to that in this State. The commissioner shall upon request from any elevator company doing business in this State issue to any employee designated by the requesting company a certificate of authority as an authorized elevator inspector, provided such inspector before receiving his certificate of authority shall satisfactorily pass the examination provided for in section 434. An authorized inspector appointed under this section shall receive no salary from the State and have no expenses paid by the State and continuance of such authorized inspector's certificate of authority shall be conditioned upon his continuing in employment as an elevator inspector by such insurance company, or in employment by such elevator company, as the case may be, and upon his maintenance of the standards imposed by this subchapter. Such authorized inspectors shall inspect all elevators insured or maintained by their respective companies, and the owners or users of such elevators shall be exempt from the payment of the fees or the periodic inspections provided in section 464. . . ." (Emphasis supplied)

The limits of authority placed upon authorized inspectors by the Legislature must be honored by insurance companies and elevator companies. Neither an insurance company nor an elevator company can ignore the dictates of the above-quoted statute and cause elevators, either insured or maintained by them, to be inspected by inspectors not in their employment, unless of course, said inspection is performed by a state inspector.

You have asked a fourth question based upon the following factual situation:

FACTS:

An owner or user of elevators does not insure the elevator so that there is no insurance company inspector involved. The elevators are maintained under a full maintenance contract by an elevator company but the elevator company has a policy of not inspecting such elevators because of a conflict of interest.

QUESTION:

Can the State inspector making the inspection, charge the owner or user the inspection fee as provided in Section 464, Chapter 5, Title 26, or is the elevator company liable for such inspection fee?

ANSWER:

The owner or user of the elevator is responsible for payment of inspection fees.

A condition precedent to the operation or use of an elevator is that said elevator be duly registered and inspected so as to meet the safety requirements imposed by law. It is the obligation of the owner or user of the elevator to meet such requirements. The owner or user may utilize the services of an authorized elevator inspector of an elevator company, an insurance company, or a state inspector. When the services of a state inspector are employed, a fee must be paid pursuant to the terms of 26 M.R.S.A. § 464. 26 M.R.S.A. § 461 which provides for inspections reads in part as follows:

"Each elevator proposed to be used within this State shall be thoroughly inspected by either the supervising inspector, a state elevator inspector or an authorized elevator inspector, and if found to conform to the rules of the board, upon payment of the inspection fee where required and a registration fee of \$3 per year by

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the owner or user of such elevator to the
inspector, the latter shall issue to such
owner or user an inspection certificate.
... " (Emphasis supplied)

Phillip M. Kilmister
Assistant Attorney General

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