

MAINE STATE LEGISLATURE

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September 7, 1967

Joseph T. Edgar, Secretary of State

State

Warren E. Winslow, Jr., Assistant

Attorney General

Establishment of Minimum Standards of Construction and Performance of Protective Headgear; P. L. 1967, c. 267.

FACTS:

The 103rd Legislature has amended Title 29 of the Maine Revised Statutes Annotated by adding a new section, i.e., § 1371, as follows:

"Every person operating a motorcycle or motor driven cycle, or riding as a passenger on a motorcycle or motor driven cycle or in a sidecar attached to a motorcycle or motor driven cycle shall wear protective headgear conforming with such minimum standards of construction and performance as the Secretary of State may prescribe."

The reference legislation becomes effective on October 7, 1967.

QUESTION:

Whether the Secretary of State may, with the approval of the Governor and Executive Council, establish minimum standards of construction and performance regarding protective headgear pursuant to the reference legislative mandate prior to the effective date of said legislation, provided that such minimum standards shall not become effective until the effective date of Chapter 267?

ANSWER:

Yes.

OPINION:

The applicable provisions of 29 M.R.S.A. § 51 read as follows:

" * * * The rules and regulations of the Secretary of State and any changes therein shall take effect when approved by the Governor and Council and published at least once in each daily newspaper in the State. * * * "

There appears to be no reason why such approval cannot be had before the effective date of the legislation enabling the Secretary of State to prescribe such rules.

2 Am. Jur. 2d § 290 states the general rule as follows:

" * * * The fact that rules and regulations were adopted prior to the effective date of a statute but after the passage of such statute does not prevent them from going into effect contemporaneously with the act."

In State v. Friedkin, 244 Ala. 494, 14 So.2d 363 (1943), the rule in question in that case was adopted by the State Board of Medical Examiners December 1, 1939. The Enabling Act was approved September 21, 1939, and became effective December 21, 1939. The Supreme Court of Alabama upheld the rule against objection on the very ground we now have before us.

It is our opinion that under these authorities, approval of the helmets in question may be had before October 7.

Warren E. Winslow, Jr.
Assistant Attorney General

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