

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

For the Years  
1967 through 1972

ANSWER:

No.

REASONS:

A state is prohibited from taxing imports or exports. *Constitution of the United States, Article I, Section 10*. The nature of the fuel to be the subject of sales at the Bangor International Airport is such that prior to its entry into the State of Maine and during the time of storage and withdrawal it is under the control and supervision of the United States Customs Service and subject to federal law and regulations. *19 USCA Section 309 and 311. 19 CFR Parts 18 and 19*. The property is treated pursuant to federal law as being in a constant state of exportation and therefore is said never to come to rest within the State of Maine. Since the fuel travels "in bond" upon its importation into the state, it never becomes a part of the common mass of property subject to taxation in the state. See *McGoldrick v. Gulf Oil Corporation*; 309 U.S. 414 (1940).

In order for the Excise Tax on gasoline to apply in this situation there must be a use or sale of the fuel in Maine. See *36 M.R.S.A. § § 2903, 2902 (3)*. Since there is no use or sale in Maine the fuel is not subject to the gasoline tax.

For the same reasons, the fuel is not subject to the Sales and Use Tax Law provisions of *36 M.R.S.A. § 1760 (8)*.

Neither is the fuel subject to property taxation while in the process of exportation.

CONCLUSION:

Property imported stored and sold in bond is therefore not subject to state taxation until such time as the property comes to rest within the state and can be considered part of the common mass of property subject to taxation.

JAMES M. COHEN  
Assistant Attorney General

September 30, 1968  
Water and Air Environmental  
Improvement Commission

Henry Mann, Chemist

Enforcement of Water Improvement Timetables.

SYLLABUS:

Dischargers, into water reclassified after January 1, 1967, face administrative enforcement action by the WAEIC if they fail to comply with applicable cleanup timetables. The Commission has no power to extend the dates within which such compliance may be had, but, after notice and hearing, may order compliance with an accelerated timetable.

*FACTS:*

The state legislature has recently reclassified upward several bodies of water (e.g., C to B-2) and in connection with the reclassification has provided that no discharge to the reclassified waters shall be deemed in violation of the new classification if such discharger takes certain steps by certain dates so that the discharge will meet the new classification. See, for example, 38 M.R.S.A. § 451 (1) (Supp. 1967). In connection with these legislative timetables you ask two questions:

*QUESTION NO. 1:*

If a discharger fails to fully perform its timetable obligations on the date required by statute, what is the procedure for enforcing compliance?

*QUESTION NO. 2:*

Does the Commission have the power to extend or modify timetable schedules?

*ANSWERS:*

1. See Reason.
2. No.

*REASON:*

The Commission must first give notice to and hold a hearing with the parties affected by the reclassifications, and issue to them special orders requiring such operating results as are necessary to achieve the interim goals of the timetable. See 38 M.R.S.A. § 451 (1) (Supp. 1967). If the goals are not achieved, then the Commission must take administrative action under 38 M.R.S.A. § 451 (2) (Supp. 1967). The procedure under this section, briefly, involves notifying the discharger of the alleged violation, summoning him in, hearing evidence, and, if the violation is found to exist, issuing an administrative order compelling compliance. If the order is not complied with within the time specified, the Commission must notify this department which must then seek judicial relief.

The Commission has no statutory authority to extend the dates of compliance with existing timetables. However, it does have the authority, after notice and hearing, to compel a discharger to meet an accelerated compliance schedule. See 38 M.R.S.A. § 451 (1) (Supp. 1967).

ROBERT G. FULLER, JR.  
Assistant Attorney General

October 7, 1968  
Water and Air Environmental  
Improvement Commission

Henry Mann, Chemist

Sections 414 and 451 of Title 38 of the Revised Statutes.