

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

buses to transport their pupils to and from school are involved in “the transportation of children.” § 2011 and the other sections concerned with school buses are designed to insure the safety of children while being carried to and from school. The prohibition against passing a loading or unloading school bus, the requirement of a special color for school buses with flashing lights and signs, and all other safety regulations all indicate a state interest in children’s safety when they are being transported to school. Although this concern and the use of school buses is most commonly associated with elementary and high schools, transporting children to pre-school institutions is just as great, if not greater in importance to the state because of the young age of pre-school children. It would be inconsistent with a state policy reflected in this statute to afford protection to elementary and high school students, and not to protect the younger, more vulnerable children who attend nursery schools.

The statute’s breadth of application is also indicated by the fact that it is to cover both private and public schools. Thus a pre-school institution, whether privately run or government-sponsored, would be covered by the school bus safety regulations.

On the basis of the above, all pre-school institutions involved in transporting children to and from their institutions when using a motor vehicle with a capacity of 10 or more must comply with the safety regulations of Title 29, § 2011 et seq.

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February 15, 1972
Aeronautics

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SYLLABUS:

1. Aircraft used by a Maine air-taxi operation in interstate commerce are exempt from the registration provisions in 6 M.R.S.A. § 14.

2. Funds which the Legislature allocated for us in land acquisition, clearing of runway approach areas and construction of runway extensions, cannot be legally used for rehabilitation (repairs) of existing portions of runways.

FACTS:

Situation No. 1: An air-taxi service is provided between Rockland, Maine and Boston, Massachusetts. The service is provided in aircraft leased from an out-of-state firm by the Maine firm.

Situation No. 2: The provisions of P & S Laws 1967, c. 178 authorized a general fund bond issue for construction, extension and improvements for airports. Moneys were allocated for the Auburn-Lewiston airport to: “Acquire land, clear approaches, extend runway 17-35” and for installation of a localizer. *Id.*, section 6. Repairs are deemed necessary respecting present portions of runway 17-35.

QUESTIONS:

1. Is the air-taxi operator required to register the aircraft in situation No. 1?

2. Can the moneys allocated in situation No. 2 be used to repair present portions of runway 17-35?

ANSWERS:

1. No.
2. No.

REASONS:

Situation No. 1: Section 14 of Title 6 of the Revised Statutes states, in part, that:

“ * * * . All nonresident aircraft owners engaged in air commerce *within the State* shall register such aircraft with the director and pay a fee of \$35 for each registration.” 6 *M.R.S.A.* § 14, *sub-§1*. (Emphasis mine.)

The reference section also specifies exemptions from registration of aircraft (and individuals), one of which exemptions is as follows:

“D. An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.” 6 *M.R.S.A.* § 14, *sub-§2, para. D*.

The aircraft made the subject of your memorandum are being used in interstate commerce between a point in Maine and a point in Massachusetts. Thus, the exemption noted above applies. No ambiguity exists between the registration requirements and the reference exemption for the reason that the subject air commerce is not “within the State”; but on the contrary occurs in “interstate commerce.” Words, “within the state”, must be construed to mean from one point in the state to another point in the state. *Commonwealth v. Chesapeake & Ohio Ry. Co.*, 251 Ky. 382, 65 S.W.2d 95 (statute prohibited common carriers from issuing free passes for transportation of passengers within the state). In *State v. Pullman Palace Car Co.*, 64 Wis. 89, 23 N.W. 871, it was decided that the words, “within the state”, in a statute authorizing the taxation of the gross earnings of a railroad company in the use of certain cars between points within the state, didn’t describe the act of going from a point in the state to a point outside the state nor from a point outside to a point inside the state. Interstate commerce is not business done “within the state”. *Pacific Exp. Co. v. Seibert*, 44 F. 310. Addition of intensifying words like “wholly” and “entirely” do not alter the reference phrase; words, “within the state”, mean done entirely within the boundaries of the state. *Western Union Tel. Co. v. City of Freemont*, 39 Neb. 692, 58 N.W. 415.

Situation No. 2: The question here is whether the words, “acquire land, clear approaches, extend runway 17-35”, embrace repairing of runway 17-35 now existing. Apparently they don’t. The Act uses the words; “repaving runway”, respecting the Millinocket airport; “resurfacing runway”, regarding the Houlton runway; “rehabilitate apron”, of the Bangor airport; and “rehabilitate, pave runway”, at Rangeley airport. If the Legislature had intended to allow use of Auburn-Lewiston Airport funds to rehabilitate runway 17-35, it should have said so.

“We are ascertaining here not what the Legislature may have meant by what it said, but rather are deciding what that which the Legislature said means.” *State v. Millett*, 160 Me. 357, 360.

Significantly, although the Legislature stated that the *amounts* listed after each unit in section 6 of the Act are to be construed as guides, no such guidance (permitting exercise of discretion) appears in the Act respecting the stated *purposes* for which the funds are to be used.

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