

MAINE STATE LEGISLATURE

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October 27, 1972

William R. Malloy, Acting Director

Bureau of Labor & Industry

Martin L. Wilk, Assistant

Attorney General

Requirement of Public Hearings under 26 M.R.S.A. §§ 373 and 565.

This will respond to your memorandum dated October 12, 1972 inquiring whether public hearings are required under 26 M.R.S.A. §§ 373 and 565 with respect to the formulation of State occupational safety and health standards where public hearings have been held pursuant to the Federal Occupational Safety and Health Act of 1970 (Pub. L. 91-595) with respect to the formulation of Federal standards. A copy of your memorandum is annexed hereto for convenient reference.

For the reasons which follow it is our opinion that the federal hearings do not have any bearing on the necessity for State hearings pursuant to 26 M.R.S.A. §§ 373 and 565. For purposes of this opinion we shall assume that the subject matter of the hearings would be identical.

The Federal Occupational Safety and Health Act of 1970 imposes an obligation on the United States Secretary of Labor "to publish a proposed rule promulgating, modifying or revoking an occupational safety or health standard in the Federal Register ..." and to "afford interested persons a period of thirty days after publication to submit written data or comments." P.L. 91-596, § 6 (b)(2).

On the other hand 26 M.R.S.A. § 373 relates to the Maine Board of Construction Safety Rules and Regulations and 26 M.R.S.A. § 565 relates to the Maine Board of Occupational Safety Rules and Regulations. Each of these state boards is required to hold public hearings prior to the adoption of rules and regulations and to give the citizens of Maine notice of such hearings. These requirements are set forth in both 26 M.R.S.A. § 373 and 26 M.R.S.A. § 565 as follows:

"Before any rules and regulations are adopted, a public hearing shall be held after suitable notice has been published in at least 3 daily newspapers in the State."

The clear and unambiguous language of the State statutes requires the holding of public hearings with respect to the

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adoption of State standards. The federal standards, while binding upon those states who do not adopt comparable standards of their own need not be adopted by the states. A state may adopt its own standards.

A comparison of the pertinent portions of P.L. 91-596 and §§ 373 and 565 of Title 26 of the Maine statutes reveals that the respective federal and State hearing requirements involve different governmental bodies, different notice requirements, and different kinds of hearings.

Under the foregoing circumstances there could hardly be any basis for the position that one was a substitute for the other. Had the State Legislature intended the publication of proposed federal standards in the Federal Register to eliminate the necessity for public hearings with respect to state standards (and the necessity for the publication of notice in 3 daily Maine newspapers) it would have expressly so provided.

MARTIN L. WILK
Assistant Attorney General

MLW/jwp

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