

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date December 21, 1972

Joseph W. Emerson

Dept. Bureau of Labor & Industry

From Leon V. Walker, Jr., Assistant

Dept. Attorney General

Subject Responsibility of a Board

This is in reply to your memorandums of December 5 and December 11.

26 M.R.S.A. § 439 provides that no person shall service, repair, alter or install any elevator unless he is licensed as an elevator mechanic under section 440. It then provides that "elevator work in industrial plants, manufacturing plants and hospitals may be performed by plant personnel who are not licensed under sections 439 to 441, provided such work is supervised by the plant engineer."

Under § 440 licenses are issued by the Director, and under § 441 the examination for licensure is by the Supervising Inspector and one member of the Electricians Examining Board.

The Board of Elevator Rules and Regulations, under § 432, formulates rules and regulations for elevator installation, operation and repair.

Your earlier memo states that the Union Mutual Life Insurance Co. "has challenged" the licensing law, claiming that its plant staff equals that of any "industrial plant, manufacturing plant or hospital" which are exempt from the licensing requirements, and that the company should be allowed to service its own elevators. In your second memo, you indicate that Union Mutual is actually in violation of § 439 by servicing its own elevators, which it freely admits.

The question you raise in your first memo is whether the Elevator Board or any Board has any jurisdiction or control over the actual enforcement or administration of the law, or whether it is merely a rule making body which should take no position in a case such as you have mentioned.

Actually, jurisdiction to enforce the law by the Board is not the issue. The Board, in its own right, has no enforcement powers over § 439. Enforcement of this section comes under § 442, which provides for a penalty by fine or imprisonment, or both, for a violation. The method for initiating a court proceeding is by means of a complaint in the appropriate District Court by any person who can make oath to the facts concerning the violation. This could be done by a person who is a member of the Board as well as by any other person. To this extent, therefore, any member of the Board should feel it to be his duty to make complaint of any violation of which he has knowledge.

LEON V. WALKER, JR.  
Assistant Attorney General

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