

MAINE STATE LEGISLATURE

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Applicability to Municipalities of Occupational Safety and
Construction Safety Rules and Regulations

SYLLABUS:

The Board of Construction Safety Rules and Regulations and the Board of Occupational Safety Rules and Regulations are empowered to promulgate rules and regulations applicable to activity by a municipality, with several exceptions.

FACTS:

Stated in the question.

QUESTION:

You ask whether or not the Board of Construction Safety Rules and Regulations or the Board of Occupational Safety Rules and Regulations is empowered to promulgate rules and regulations applicable to activity by a municipality?

ANSWER:

Yes, both of these boards are so empowered, with several exceptions indicated in "Reasons."

REASONS:

Board of Construction Safety Rules and Regulations:

26 M.R.S.A. § 373 specifies the powers and duties of this Board in these words:

"The board shall formulate and adopt reasonable rules and regulations for safe and proper operations in construction within the State."

The word "construction" is defined in 26 M.R.S.A. § 371, subsection 4 as follows:

"4. Construction. 'Construction' shall mean and include forming, erection, demolition, dismantling, alteration, repair and moving of buildings and all other structures and all operations in connection therewith; and shall also include all excavation,

roadways, sewers, trenches, tunnels, pipe lines and all other operations pertaining thereto. The term 'construction' shall not apply to construction for self use where the number of persons engaged for hire, or by virtue of a contract, does not exceed 5."

It seems clear from the foregoing that the legislative grant of power to this Board encompasses all "construction" within this State, with the sole exception being "construction for self use where the number of persons engaged for hire, by virtue of a contract, does not exceed 5." Hence, any "construction," by a municipality would be subject to the jurisdiction of this Board, unless it comes within the above-described exception.

Board of Occupational Safety Rules and Regulations:

26 M.R.S.A. § 561 provides:

"It is declared the public policy of the State of Maine that workers employed in any occupation shall be protected from hazards to their health or safety and that working conditions shall be maintained that will be reasonably free of hazards to their health and safety."

26 M.R.S.A. § 562 provides:

"This chapter shall apply to all employers except those exempt under section 45-A."

26 M.R.S.A. § 45-A provides:

"Sections 44 and 45 shall not apply to work on a farm or in or about a private residence or commercial fishing nor to employment in any Federal Government establishment nor to any activity subject to the control of the Interstate Commerce Commission, or the Maine Public Utilities Commission."

26 M.R.S.A. § 563, subsection 7, provides:

"Occupation. 'Occupation' shall mean employment in an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;"

It is clear from the above statutory provisions that the Legislature intended to grant jurisdiction to this Board over "all" employers having employees engaged in any "occupation", except those employers which it explicitly exempted in 26 M.R.S.A. § 45-A. Municipalities are not expressly included within that exemption, and, hence, they are generally subject to the jurisdiction of this Board, as to any of its employees who are engaged in any "occupation," as that term is defined in 26 M.R.S.A. § 563, subsection 7, with the exception of such activities by the municipality that come within one of the exceptions specified in 26 M.R.S.A. § 45-A.

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