

# MAINE STATE LEGISLATURE

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Department of Health and Welfare ✓

STATE HOUSE, AUGUSTA, MAINE

Date July 23, 1973

Dean Fisher, M.D. Att: Donald C. Hoxie, Acting Director, Div. of Health Engineering

From Andrews B. Campbell, Assistant Attorney General

Subject Exceptions Provision of Rules Relating To Mobile Home Parks and Camping Areas

SYLLABUS:

A new owner as applicant for a new license to operate a trailer park may be excepted from compliance with all the design and construction standards of the current Rules and Regulations of the Department of Health and Welfare relating to Mobile Home Parks and Camping Areas if the area in question was licensed prior to the effective date of the current rules and is capable of being maintained in a sanitary condition.

FACTS:

A trailer park licensed by the Department prior to the effective date of the rules and regulations relating to such parks has design, structural and layout features which do not meet the current rules. Rule 3.3, Rules and Regulations of Maine Department of Health and Welfare relating to Mobile Home Parks and Camping Areas, approved and adopted November 16, 1972, provides that "Mobile Home Parks shall contain a minimum of 10,000 square feet (not including roads and streets) for each mobile home site". Rule 3.2 provides that "Mobile homes shall be separated from each other and from other buildings and structures in the following manner: (by thirty-five feet)". The park in question is designed and laid out for less than 10,000 square feet per site, and risers, and other permanent structures are set for trailers to be less than thirty-five feet apart. Changing the park in question to 10,000 square feet for each site and thirty-five feet separation between home units would involve a substantial investment, and would substantially decrease the sale value of the property. Sale of the property is contemplated to a new owner who would have to obtain a new license to operate the park under Section 2484 of Title 22, M.R.S.A., as amended. Denial of a variance would result in relocation of fourteen to twenty family units from this park and in probable closing down of the park.

QUESTION:

Can a new owner as applicant for a new license be excepted from compliance with the provisions of Rules 3.3 regarding square footage and 3.2 regarding separation of units by reason of Rule A 1.5 "Exceptions"?

ANSWER:

Yes; as qualified in opinion.

REASONING:

Rule A 1.5 "exceptions", Rules and Regulations of the Department of Health

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Page 2

and Welfare Relating to Mobile Home Parks and Camping Areas, approved and adopted November 16, 1972, reads as follows:

#### EXCEPTIONS

- A 1.5 Mobile home parks, trailers, camps, recreational vehicle areas and wilderness recreational areas, licensed by the Department prior to the effective date of these Rules and Regulations, which do not comply with all the design and construction standards of the Rules and Regulations may be deemed acceptable with respect to said design and construction standards if they are capable of being maintained in a sanitary condition.

The intent of this rule is manifest from its wording and is to make eligible for exception "parks, trailers, camps, recreational vehicle areas and wilderness recreational areas" not in full compliance with design and construction standards. The park or area is eligible or ineligible for exception rather than the owner or licensee. Therefore, a park would still be eligible or ineligible for exception under a new owner not licensed prior to the current rules.

The exceptions rule was adopted with a view to the substantial economic cost to owners of parks that would be entailed in meeting new design and construction standards and was intended to prevent undue hardships. However, the exceptions provision is intended to be available only for major variances in design and construction standards and not for less serious variances. The language of the exceptions section makes clear that all design and construction changes are not excepted and changes in design or construction may be required prior to the granting of a license to a new owner. The language of the section "may be deemed acceptable" further indicates that the granting of a variance is not of right but is permissive and rests in the discretion of the Department. Moreover, variances can be granted only if the area in question was licensed prior to the effective date of the current rules and is "capable of being maintained in a sanitary condition".

It is suggested that upon each application for a new license as to any given area or park, review be made of the conditions and circumstances upon which any variance has been granted, to determine whether there is a continuing need for such variance, especially whether there would be undue hardships in terminating such variance and whether the variance remains consistent with sanitary maintenance of the area.



Andrews B. Campbell

Assistant Attorney General