

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

JON A. LUND
ATTORNEY GENERAL

December 31, 1973

Honorable Wakine Tanous
Senate Chamber
State House
Augusta, Maine 04330

Dear Senator Tanous:

This is supplemental to our letter to you of December 21, 1973, concerning the relationship of the State of Maine to the Portland Pipe Line.

Portland Pipe Line Corporation was organized under the general law on March 7, 1946, a successor corporation to Portland Pipe Line Company which had been organized under the general law on May 22, 1941. This latter corporation was dissolved on November 28, 1947.

In Portland Pipe Line Corporation, et al. v. Environmental Improvement Commission, et al., Me. 307 A.2d (1973) Portland Pipe Line was described as engaged in business as a common carrier, licensed and regulated by the Interstate Commerce Commission, transporting oil by pipe line from its terminal in South Portland to the Canadian border at North Troy, Vermont, where the oil is delivered to a connecting common carrier for transportation to Montreal. All oil tendered to Pipe Line, under conditions set forth in its approved tariffs (filed with I.C.C. under 49 U.S.C.A. § 1, which has regulatory power, including authority to regulate rates) is offloaded at its pier in South Portland, and is received solely for transportation. "Pipe Line has no property interest in the oil thus received. The oil is received under the supervision and control of customs officials, solely for export and cannot be diverted for use in Maine." Portland Pipe Line Corp., Supra.

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A case on all fours with Portland Pipe Line is Hostetter v. Idlewild Airport (1964) 377 U.S. 324, where the United States Supreme Court held that though the State has the power under the Twenty-first Amendment to regulate transportation, through its territory, of intoxicants to avoid their diversion into domestic channels, the Commerce Clause deprives the State of power to prohibit passage of liquor through its territory under the supervision of the United States Bureau of Customs acting under Federal law for delivery to consumers in foreign countries.

Counsel for the Maine Public Utilities Commission states that P.U.C. exercises no regulatory powers over Pipe Line. The Department of Transportation likewise exercises no power over Pipe Line where the pipe line is located in a highway right of way, except to the extent that the location should interfere with the public right of travel, in which event it would require modification of the pipe line location.

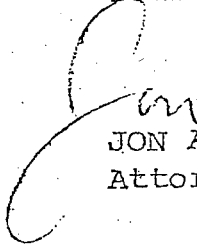
Portland Pipe Line Corporation holds a right of way easement to 3 strips of land across a portion of land of the Boys Training Center. These easements were conveyed by leases dated February 1, 1950, December 16, 1964 and July 18, 1968, all of which have been approved by the Maine Legislature respectively as follows: P & S 1951, Ch. 1, P & S. 1965, Ch. 10 and P & S 1969, Ch. 12. Each lease commences on the date thereof and continues for a term as long as a pipe line for the transportation as a common carrier for hire of oil and oil products is maintained on said strip of land by Lessee "or its successors or assigns." The rental in each lease "for the full term thereof" is a single sum of money "to be paid on the date of delivery" of the lease.

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There are no provisions for termination of any of the leases by the Lessor.

We conclude from the above that the State cannot constitutionally divert, impede or stop the transmission of oil by Portland Pipe Line Corporation. Reference is made to our letter of December 21 for an analysis of the taxation powers of the State which may be properly brought to bear.

Yours very truly,



JON A. LUND
Attorney General

JAL/jwp