

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date November 4, 1974

To Maynard C. Dolloff, Commissioner

Dept. Agriculture

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject Authority under P.L. 1971, c. 446

In your memorandum of August 30, 1974, submitted to this Office, you inquire as to whether or not you may promulgate and enforce standards for which the Occupational Safety and Health Administration has already established standards. You properly note the fact that, as of this date, the State of Maine has not adopted a State Plan in accordance with the provisions of the federal Occupational Safety and Health Act; hereinafter referred to as the "Act."

The answer to your question is a qualified no, the qualification being that, to the extent a Federal standard has been promulgated on an issue, you may not promulgate and enforce any health or safety standard on that issue, unless approval to said standard is obtained from the Secretary of Labor, as part of a State Plan, pursuant to the terms of Section 18 of the Act.

The answer to your question is founded entirely upon the basis of pre-emption of state law by federal law.

By the enactment of the Occupational Safety and Health Act in 1970, Congress has mandated a vast array of wide ranging occupational health and safety standards which are applicable to all of the states. Congress has, however, provided the means whereby the various states, through appropriate agencies, may provide for the development and enforcement of safety and health standards, provided the standards "will be at least as effective as the Federal standards and enforcement." (See Title 29 C.F.R. section 1902.1(c)(4) and (d) and Section 18(a-h) of the Act.)

Any proposed state standards, which are amendatory or additional to existing Federal standards, must pass muster and be approved by the Secretary of Labor, before said standards can become enforceable under an approved State Plan.

I would call to your attention the following relevant language of the Code of Federal Regulations which reads as follows:

"Section 18(a) of the Act is read as preventing any state agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued under section 6 of the Act. Section 18(h) permits the Secretary to provide an alternative to the exclusive Federal jurisdiction on such occupational safety or health issue. This alternative

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is temporary and may be considered a step toward the more permanent alternative to exclusive Federal jurisdiction provided by sections 18(b) and (c) following submission and approval of a plan submitted by a State for the development and enforcement of occupational safety and health standards. (emphasis supplied) "Alternative to Federal pre-emption," 29 C.F.R. 1901.2 (1973).

The Secretary of Labor has designated only four of the many thousands of standards relating to occupational health and safety as set forth in the Federal Register, as applying to agriculture and agribusiness. These four are: (1) sanitation in temporary labor camps; (2) storage and handling of anhydrous ammonia; (3) pulpwood logging; and (4) use of "slow-moving vehicle" emblems.

Pursuant to the terms of P.L. 1971, c. 446(5), as Commissioner of Agriculture, you may adopt additional standards for use in the above-designated areas, provided such standards are approved by the Secretary of Labor for inclusion in a State Plan.

It should also be noted in closing, that your authority, as Commissioner of Agriculture, to promulgate standards protective of the health and safety of workers engaged in agricultural labor in the State of Maine, as set forth by the terms of P.L. 1971, c. 446(5) (26 M.R.S.A. § 580, 581), is in no manner diminished as to any area of agriculture in which no federal standards have been adopted under the terms of the Federal Occupational Safety and Health Act.


PHILLIP M. KILMISTER
Assistant Attorney General

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