

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date September 30, 1975

To Lt. Col. Allan Weeks, Deputy Chief Dept. Maine State Police

From Joseph E. Brennan, Attorney General Dept. Attorney General

Subject Arrest for Traffic Infractions

SYLLABUS:

Although the legislature has authorized law enforcement officers to make custodial arrests for traffic infractions, the effecting of a custodial arrest for a traffic infraction may be unconstitutional. An officer who has stopped an individual for the commission of a traffic infraction may issue the person a copy of the Uniform Traffic Ticket and Complaint but should not make a custodial arrest.

FACTS:

P.L. 1975, c. 430 has reclassified many motor vehicle violations, designating them "traffic infractions." Section 28 of chapter 430 defines a "traffic infraction" as:

"any violation of any provision of this Title, or of any rules or regulations established thereunder, not expressly defined as a felony or misdemeanor, and otherwise not punishable by incarceration or by a fine of more than \$500. A traffic infraction is not a crime and the penalty therefor shall not be deemed for any purpose a penal or criminal punishment. There shall be no right to trial by jury for a traffic infraction."

QUESTIONS:

1. Should a State Police officer make a custodial arrest of a person who has committed a traffic infraction?

2. If the answer to question #1 is affirmative, may the arrestee be admitted to bail in the same manner as if he had committed a misdemeanor?

ANSWERS:

1. No

2. Because a custodial arrest should not be made in cases of traffic infractions, no question arises as to bail.

REASONS:

The legislature, in enacting P.L. 1975, c. 430, clearly intended that law enforcement officers (State Police as well as municipal and county officers) have the authority to make custodial arrests for traffic infractions. Authorization for custodial arrests exists both for arrests made pursuant to a warrant and for warrantless arrests. P.L. 1975, c. 430, §7 (warrant); 25 M.R.S.A. §1502; 29 M.R.S.A. §2301; P.L. 1975, c. 430, §§ 9, 23, 67, 73 and 74 (without a warrant).

However, the response to your question does not end with recognition of the statutory authority to arrest. If the Maine Supreme Judicial Court determines that the provisions of P.L. 1975, c. 430 relating to traffic infractions are constitutional in view of State v. Sklar, 317 A.2d 160 (Me. 1974), it would have to find that traffic infractions are civil in nature as well as in definition. Given this determination by the court, there is a significant likelihood that the Maine Supreme Judicial Court would rule that a custodial arrest for a traffic infraction would infringe an individual's constitutional rights. Recent Law Court cases suggest that a custodial arrest for certain minor offenses--and this would seem particularly applicable to non-criminal offenses such as traffic infractions--would constitute an unreasonable seizure under the Fourth and Fourteenth Amendments. See State v. Paris, Docket No. 1203 (Me. Opinion filed on August 21, 1975) (dicta); State v. Dubay, 338 A.2d 797 n. 1 (Me. 1975) (dicta); see also Gustafson v. Florida, 414 U.S. 260, 266-67, 94 S.Ct. 488, 492, 38 L.Ed. 2d 456, 462 (1973) (Stewart concurring). Moreover, Law Court cases condemning custodial arrests as a mechanism for the commencement and maintenance of civil actions suggest that custodial arrests for traffic infractions may constitute an unconstitutional deprivation of a person's liberty under the due process clauses of the United States and Maine Constitutions. See Yoder v. County of Cumberland, 278 A.2d 379 (Me. 1971); Moulton v. Moulton, 309 A.2d 224, 226 (Me. 1973) (dicta). Furthermore, in promulgating Rule 80-F, Maine Rules of Civil Procedure, the Maine Court has expressly declared that traffic infraction proceedings should not be commenced by custodial arrest. The pertinent language of Rule 80-F (promulgated October 1, 1975) is as follows:

b. Commencement of Proceedings

A proceeding under this rule shall be commenced by any officer authorized to enforce the motor vehicle laws of this State who has probable cause to believe that a traffic infraction has been committed. Said officer shall not take the defendant into custody but shall deliver to the defendant personally a copy of the Uniform Traffic Ticket and Complaint. . . . (Emphasis added)

We recognize that acts of the legislature are entitled to a strong presumption of constitutionality. However, in view of the Maine Supreme Judicial Court cases indicating that custodial arrests for traffic infractions may be unconstitutional and in view of the language of recently promulgated Rule 80-F, Maine Rules of Civil Procedure, we strongly urge that as a matter of policy all Maine law enforcement officers charged with the enforcement of the motor vehicle laws refrain from making custodial arrests for traffic infractions.

JOSEPH E. BRENNAN
Attorney General

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