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STATE OF MAINE
Inter-Departmental Memorandum Date February 9, 1976

To Jan Saleeby

Dept. Passenger Tramway Safety Board

From Sarah Redfield, Assistant *Sarah Redfield* Attorney General

Subject Inspection Costs

This is in response to your request of January 20, 1976 for an opinion as to whether certain inspection costs of the Passenger Tramway Safety Board (hereinafter "the Board") can be charged to the tramway operators. More specifically, you have asked whether operators might be charged for research, for time devoted to writing, and for travel time.

Title 25 M.R.S.A. §1946 provides :

"The board may make such inspection of the construction, operation and maintenance of passenger tramways as the board may reasonably require. The board may, at its own expense, employ other qualified engineers to make such inspections, or may borrow them from other departments in the State."

It is my understanding that in addition to borrowing services from the employees of the Bureau of Parks and Recreation, the Board currently employs an inspector whose salary is paid with the Board's own funds.

Title 25 M.R.S.A. §1947 provides in regard to payment of inspection costs:

"The expenses in connection with making inspections under section 1946 shall be paid in the first instance by the board, provided that each operator shall, upon notification by the board of the amount due, reimburse the board for the share of the salary of board personnel engaged in making such inspections. The board shall not charge in excess of the hourly rate charged the board by the inspector for the services of its personnel in making such inspections and shall, where the board provides by regulation, be entitled to reimbursement for the travelling time or expenses of such personnel. Any reimbursement shall be credited to the special appropriation for the board to be expended for the purposes of this chapter."

Pursuant to this section, it seems clear that the Board may charge the Operator for such portion of the investigator's salary as reflects the proportion between the inspector's total compensation and the number of working hours involved in inspection of a given tramway's operation. It would also appear that this charge could appropriately include those hours reasonably spent in writing a report of the inspection for the Board. When the statute is read as a whole, it appears that the legislature set up a procedure for tramway control which, in essence, was based on inspection of tramway facilities and action by the Board. As a practical matter, the time devoted by the inspector to reporting to the Board is of absolute necessity to the functioning of the inspection scheme. Accordingly, reporting appears to be an inherent component of inspection and inspection costs contemplated by §1946 and §1947. This conclusion is further supported by the declaration of policy which indicates:

"It shall be the policy of the State of Maine to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts and tramways, to ensure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts and passenger tramways. The primary responsibility for design, construction, maintenance and inspection rests with the operators of such passenger tramway devices. . ." 25 M.R.S.A. §1901.
(emphasis added)

As to expenses for hours involved in "research", it would seem that the specific fact situation would be determinative.

As to travel expenses related to inspections, these are reimbursable to the extent which the Board's regulations so provide. Review of the Regulations of the Passenger Tramway Safety Board (hereinafter "Regulations") indicates that currently travel expenses are to be charged to the Operator as follows:

(1) Where the first two construction inspections and the final inspection of new installations or alterations require more than one day, travel expenses are reimbursable for the additional days, Regulations, section 1.D.

(2) Where new installation or alterations require more than 2 construction inspections and a final inspection, travel expenses are reimbursable for all additional inspection, Regulations, section 1.D.

(3) Where re-inspection (as defined by section 2.E of the Regulations) is necessary, travel expenses are reimbursable, Regulations, section 1.E.

As currently drafted, the Regulations do not provide for the payment of travel expenses by the Operator for

(1) New installation and alteration construction inspections of one day's duration.

(2) New installation and alterations final acceptance inspection of less than one day's duration.

(3) Annual inspections as contemplated by section 2.D of the Regulations.

If the Board wishes to charge travel expenses for such inspections, it may do so by amendment of its regulations. This might best be done by deletion of paragraph 2 of section 1.D and section 2.E and replacement thereof by a provision such as:

Where inspection of any tramway is deemed necessary by the Board, the cost of such inspection shall be paid by the Operator. Such costs shall include payment of the hourly rate charged by the inspector or the applicable proportion of the inspector's salary for the number of hours involved in travel, inspection and reporting thereof, and shall further include all reasonable travel expenses related to said inspection.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.