

# MAINE STATE LEGISLATURE

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Boiler Inspection Fees  
State Inspections Fees

26 M.R.S.A. § 173

STATE OF MAINE

Fees: Authority To Charge

Inter-Departmental Memorandum Date November 4, 1976

To Harold S. Noddin, Director

Dept. Bureau of Labor

From Kirk S. Studstrup, Assistant

Dept. Attorney General

Subject Fees for Inspection of Power Piping

Your memorandum of October 6, 1976, requested an opinion concerning the authority of the Board of Boiler Rules to set fees for inspection of welded power piping by State boiler inspectors. It is my understanding that such welded power piping is an intragal part of a boiler system and that inspection of the piping is required by rules formulated pursuant to the authority of 26 M.R.S.A. § 173. The rules are set forth in the boiler code of the American Society of Mechanical Engineers, which has been adopted by the Board. You noted in your memorandum that although an authorized inspector for an insurance company would charge approximately \$150 per day for such inspection, there does not appear to be any provision in the boiler law or rules to allow the Bureau to do likewise.

On the basis of these facts, you have asked the following question:

"Does the Board of Boiler Rules have the authority to set fees for special inspections? Said fees would include travel expenses, hourly wage of the inspector, plus a 19.1% administrative cost. Section 245, Title 26 presently gives the board some fee setting authority for 'specially designed boilers.' Might this be interpreted to cover special inspections as described above?"

The answer to your question is negative for the reasons stated below.

Your statement concerning the apparent lack of any statutory provision for fees to be charged for inspection of welded power piping is correct. Although there are several sections of the Boiler Code, 26 M.R.S.A. §§ 141, et seq., which provide for the payment of various fees to the Board (see §§ 176, 178, 179, 244 and 245), there is no specific statutory provision for fees for inspections of this type. The question, therefore, is whether the Board has the authority to set fees by regulation in the absence of a statutory provision.

As a general rule, administrative agencies have certain implied powers necessary to fulfill their administrative functions. 1 Am. Jur.2d, Administrative Law, Sec. 73, page 869. However, in the case of an agency's rule or regulation-making authority, there should be a distinction made between procedural rules designed to implement the agency's program and legislative rules which expand upon the agency's statute. A rule setting a fee for inspections in the present case would be legislative in nature and therefore should be based upon a

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specific and explicit delegation of statutory authority by the Legislature. 1 Cooper, State Administrative Law, pages 176-177; Cf. Brooklyn Hospital vs. Doulon, 132 N.E.2d 489 (N.Y., 1956). Title 26 M.R.S.A. § 173 directs the Board to ". . . formulate rules for the safe and proper construction, installation, repair, use and operation of boilers and pressure vessels in this State." but it does not authorize the Board to set fees for inspections pursuant to those rules. On the other hand, § 245 contains an extensive list of charges to be made for inspection of various boilers. The Board is authorized by that section to set a fee for inspection of "specially designed boilers," but contains no provision concerning inspection of power piping as required by administrative regulations.

The combination of a lack of specific statutory authority to promulgate fee-setting regulations and the legislative provision for inspection fees found in § 245 lead to a conclusion that the Board may not set inspection fees by rule or regulation. It is suggested that fees for such inspections, whether set by statute or by authorized regulation, would require legislative action.

This memorandum contains the opinion of the author and is not an opinion of the Attorney General.

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S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe