

MAINE STATE LEGISLATURE

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Police out of state jurisdiction
25 M.R.S.A. 1665 et seq.
Law Enforcement out of state jurisdiction
STATE OF MAINE

Inter-Departmental Memorandum Date March 3, 1977

Col. Allan H. Weeks, Commissioner Dept. Public Safety

Joseph E. Brennan, Attorney General Dept. Attorney General

NESPAC

The following is a response to your inquiry dated August 16, 1976 in which you state:

"1. Our personnel are on a moving surveillance in Maine, without prior notice or planning this surveillance goes through New Hampshire and into Massachusetts, where the suspects are arrested at gunpoint while attempting to blow up a State Police Barracks.

Question: 'Is this officer performing within the agreement of the NESPAC contract?'"

Answer: No

Reasons:

It is assumed that your inquiry is actually directed at the matter of the arrest of the suspects at gunpoint in Massachusetts while they are attempting to blow up the State Police Barracks there. Surveillance is not, strictly speaking, police activity since anyone can lawfully engage in the kind of surveillance you describe.

This response therefore will be directed at the activity which you described in your hypothetical as the arrest of the suspects at gunpoint while they are attempting to blow up the State Police Barracks in Massachusetts.

The pertinent statute is Title 25 M.R.S.A. §§1665 et seq. Section 1666 thereof sets out the purposes of the statute. Your hypothetical would appear to come under paragraph 3 of section 1666. Paragraph one of that section does not apply because its language is too vague to be interpreted as granting police powers to Maine police officers in another state. Furthermore, the interstate grant of police powers referred to in paragraph three of section 1666 and paragraph four of section 1672 must be preceded by two things: First, police emergencies (as discussed below); second, a specific request for emergency aid from the administrative head of the State Police.

Under paragraph three of section 1666 Maine officers receive an inter-state grant of police powers ". . .in the event of police emergencies. . .". Police emergencies are defined in section 1672.

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That section states, among other things, that an emergency under this statute exists: ". . .when the state police department of a party state is, or may reasonably be expected to be, unable to cope with substantial and imminent danger to the public safety, and in which the cooperation of or aid from local police forces within the state is, or may be reasonably expected to be insufficient." The situation you have outlined does not appear to meet all of these criteria. Furthermore, it appears that under paragraph two of section 1672 state police can act in a police capacity in another state under this statute only upon the prior request of the administrative head of the state police of a so-called "requesting state" and the issuance of corresponding orders to that effect from the administrative head of the state police department of the so-called "responding state".

In your memorandum of August 16, 1976 you also ask:

"2. If the Chief of the New Hampshire State Police enlists the aid of this agency under the emergency clause, may I commit troops or does clearance have to be obtained from the Executive Office under the NESAPAC agreement?"

Answer: Maine State Police Officers may be committed to a party state under Title 25 §§1666 et seq. without clearance from the Executive (Governor's) Office.

Reasons:

Paragraph two of §1672 by its language places sole discretion for ordering Maine State Police into a party state, once the other conditions have been met, in the administrative head of the State Police. No reference is made to clearing that decision with the Chief Executive of the responding state and under Title 25 M.R.S.A. §1501 the Chief of the State Police is denominated the executive head of the State Police. As such, it would also appear that he and not the Governor is the administrative head of that Bureau.

Assuming that the State Police Chief is thus the administrative head of the State Police as that term is used in Title 25 §1672, the only language in §1501 that would suggest that the State Police Chief would have to clear his decision with anyone is the following:

"the Chief of the State Police. . .shall execute the duties of his office under the direction and subject to the approval of the Commissioner of Public Safety."

However, no opinion is expressed as to whether the language does require clearance from the Commissioner of Public Safety since in your case the question is moot because you are both the Chief

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of the State Police and the Commissioner of Public Safety.

Finally, sections 2901 as amended, effective July 29, 1976, and 2901-A of Title 25, relating to the Commissioner of Public Safety, contain no language that would require the Commissioner to clear such a decision with the Governor of this State.

Joseph E. Brennan

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Attorney General

JEB:ks