

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 25, 1977

Harold S. Noddin, Director

Dept. Bureau of Labor

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject

Question Presented

The question presented is whether the authority to enter business premises for the purpose of gathering information and enforcing health and safety requirements, vested in the Bureau of Labor and Industry by 26 M.R.S.A. §§ 44, 45, extends to farms operated by the University of Maine.

Background

In a telephone conversation of March 23, 1977, Professor Leonard of the University of Maine's farm at Orono discussed the nature and extent of the activities conducted on the various farms operated by the University of Maine. These include the planting, cultivating and harvesting of various crops, dairy and poultry production, and the processing and packaging of foods such as potatoes and milk. In Professor Leonard's opinion, the only activity which distinguishes the University's farms from commercial farms is the field research conducted under the supervision of the University's professors.

Synopsis of Answer

From an analysis of the relevant statutory provisions, it is apparent that the authority to enter farms operated by the University of Maine for the purposes of gathering information and enforcing compliance with health and safety standards is vested in the Commissioner of Agriculture by 26 M.R.S.A. §§ 581-2, and not in the Bureau of Labor and Industry.

The answer to the question presented requires the harmonious reconciliation of 26 M.R.S.A. §§ 44-45A, as amended by P.L. 1975, c. 519, and 26 M.R.S.A. §§ 581-582.

26 M.R.S.A. § 44 establishes and defines the authority of the Director of the Bureau of Labor and Industry to enter upon business premises for the purpose of gathering information and inspecting working conditions, and enforcing occupation health and safety standards.

26 M.R.S.A. § 45-A limits the entry power of the Director by providing that it "shall not apply to work on a farm."

26 M.R.S.A. §§ 581-582 complements the scope of activities under the regulation of the Bureau of Labor and Industry by vesting the authority to adopt, administer and enforce occupational health and safety standards for agricultural workers in the Commissioner of Agriculture. These provisions were added by amendment to a bill which was subsequently enacted as P.L. 1971, ch. 446. The purpose of the amendment to the Bill, Amendment H 405, was, in the words of its sponsor, "so that Maine does not lose its option to set its own standards with respect to agricultural worker."^{1/}

Since the functions and purposes of the Director of Bureau of Labor and Industry and the Commissioner of Agriculture with respect to occupational health and safety, as defined by the aforementioned statutory provisions, are substantially similar, the proper construction of their respective zones of responsibility is one that avoids overlapping the subject matter of their authority.

26 M.R.S.A. § 45-A specifies that the Bureau's authority to regulate occupational health and safety "shall not apply to work on a farm." The question arises as to whether the research, processing, and packaging activities conducted on farms operated by the University of Maine comprise something other than "work on a farm."

A consideration of other provisions of the Title 26, as well as similar federal statutes, and interpretations of them, supports the conclusion that "work on a farm" encompasses both farm activities and non-farm activities which are incidental to farming activities. DeWeaver v. Jackson & Perkins Co., 63 NYS2d 593 (A.D. 1946) ("work on a farm" exclusion from child labor law, includes growing of plants in greenhouses on horticultural farm).

For example, minimum wage provision of Title 26, §§ 663, et seq., are made inapplicable by § 663(3)(A) to "individuals employed in agriculture," defined by 26 M.R.S.A. § 1043(1) to include the "processing, packing, transportation or marketing of the produce of a farm." This provision was drawn verbatim from the Federal Fair Labor Standards Act, 29 U.S.C. § 203(f), which has been interpreted to include the transportation and repair of farm implements, Maneja v. Waialua Agriculture Co., 349 U.S. 254 (1954), and the cultivation of plants in nurseries and greenhouses, Danutz v. William Pinchbeck, Inc., 158 F.2d 882 (2nd Cir. 1946), within the exemption for agricultural labor.

^{1/} In context, this meant that the purpose of the amendment was to preempt the application of federal standards adopted pursuant to the Occupational Health and Safety Act of 1970, 29 U.S.C. §§ 661 et seq. to agricultural workers in Maine.


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Because the processing, packing, and research activities conducted on farms operated by the University of Maine are incidental to the farming activities conducted thereon, they are included within the "work on a farm" limitation upon the Bureau of Labor and Industry's power of entry, as provided in 26 M.R.S.A. § 45-A.

For the same reasons, the authority of the Commissioner of Agriculture over the occupational health and safety of "workers engaged in agricultural labor," 26 M.R.S.A. § 580, extends to those activities excluded by § 45-A from the authority of the state factory inspector. This provision reflects a legislative judgment that the special expertise of the Commissioner of Agriculture in agricultural matters should be brought to bear on the problems of occupational health and safety in farming activities.

The types of premises subject to entry by the state factory inspector was recently broadened by P.L. 1975, c. 519, § 4, effective July 1, 1977. Prior to the amendment, the power of entry was limited to "any factory or mill, construction activity, workshop, private works or state institutions which have shops or factories . . ." In its amended version, 26 M.R.S.A. § 44 authorizes entry upon "any workplace," occupationally defined by 12 M.R.S.A. § 4 as "any plant yard, premises, room, or other place where an employee or employees are engaged in the performance of labor or service over which the employer has the right of access or control.

The question arises as to whether these amendments to the Director's entry power enlarge his jurisdiction so as to encompass agricultural or quasi-agricultural activities not covered by the former § 44. The legislative history of P.L. 1975, c. 519 indicates that an expansion of the Director's jurisdiction to these areas was not intended. 26 M.R.S.A. § 45-A, which exempts work on a farm from the coverage of § 44, was omitted from 1975 L.D. 646, which, in amended form, became P.L. 1975, c. 519. In fact, the proposed bill would have repealed § 45-A. The fact that the Legislature saw fit to "re-erect" § 45-A in the same law which generalized the Bureau's Authority implies that no diminution of the limitations of § 45-A was intended.


DONALD G. ALEXANDER
Deputy Attorney General

DGA:mfe

cc: Joseph Williams, Commissioner