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No. for Vehicle Regulation on Private Property L.D. 265

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 25, 1977

Honorable Emile Jacques
Committee on Transportation

Re: Constitutionality of L.D. 265

Dear Representative Jacques:

This letter responds to that portion of your letter of March 24, 1977, asking whether the provisions of L.D. 265, if enacted into law, would violate the Maine or United States Constitutions. The second portion of your letter, inquiring as to the constitutionality of the provisions of L.D. 519, will be answered in a separate opinion.

The prohibitions of 29 M.R.S.A. §1252 ("imprudent speed"; "excessive speed"), §1311 ("reckless driving") and §1314 ("driving to endanger"), by their terms, apply to the operation of a vehicle "on a way or in any other place." 29 M.R.S.A. §1317, however, limits the territorial application of each of these statutes by providing, inter alia, that they "shall not apply to any private land to which the public does not have legal access." L.D. 265 would amend §1317 by striking that portion of the section which provides for non-application of §§1252, 1311 and 1314 to "private land to which the public does not have legal access."

The manifest intent of the proposed amendment is the protection of all persons who might be endangered by the careless or reckless operation of a motor vehicle, regardless of whether the operation takes place on a public way.¹ In holding that the language "in any other place" made the precursor of our

1. Although the Statement of Fact accompanying L.D. 265 states that the purpose of the amendment is to prohibit violations on the private land of another, the amendment would apply the three statutory prohibitions to one's own land as well.

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present "operating under the influence" statute applicable to private land to which the public had no right of access, the Maine Supreme Judicial Court said,

"[T]he legislature appreciated that the menace was the same to people using private ways, driveways and any other places where motor vehicles might be operated. These people should be protected against the intoxicated driver of a motor vehicle. They should not lose the benefit of that protection the instant they step from the line of a public way into a private way or driveway. The legislature evidently intended to safeguard the rights of all persons who might be endangered without limitation to those on public ways or even confining the protection to places where the public had the right of access.

"It is common knowledge that, in this State, there are many private ways on lands privately owned. These do not constitute places to which the public has a right of access, but they are frequently used by pedestrians and drivers of motor vehicles." State v. Cormier, 141 Me. 307, 312, 43 A.2d 819, 821 (1945).

Although the Court in Cormier was not confronted with the constitutional issue, implicit in the court's analysis was a recognition that legislative control of the potentially dangerous operation of motor vehicles on private land was a reasonable exercise of the police power. For the purpose of ascertaining the reasonableness of the exercise of the police power, the proposed legislative prohibition against careless and reckless driving on private land is indistinguishable from the prohibition against drunken driving. The State of Maine clearly has an interest in protecting its citizens, both ambulatory and motoring, from the dangers caused by the operation of motor vehicles at unsafe speeds or in a reckless or otherwise dangerous manner on private land.

Therefore, because the application of 29 M.R.S.A. §§1252, 1311 and 1314 to private land to which the public does not have legal access bears a rational relationship to the furtherance of the Legislature's legitimate police power interest to promote the safety of the public, L.D. 265, if enacted into law, would comport with the constitutional mandate of due process of law.

Sincerely,



MICHAEL D. SEITZINGER
Assistant Attorney General

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cc: Representative Charles G. Dow