Federal - State Anti-trust Treaties
Pipeline Treaty

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Honorable Robert S. Howe
House of Representatives
State House
Augusta, Maine

Dear Representative Howe:

You have asked whether L.D. 1476 "AN ACT to Establish a Pipeline Privilege Tax," would be in conflict with the proposed Transit Pipeline Treaty between the United States and Canada, which is presently before the United States Senate for ratification. My answer is that the proposed Act would be in conflict with the terms of the Treaty and would, therefore, be invalid under the Supremacy Clause of the United States Constitution, Article VI, par. 2.

Under the Supremacy Clause, treaties entered into by the United States become supreme law of the land and, therefore, invalidate any state legislation inconsistent therewith. Missouri v. Holland, 252 U.S. 416 (1920). Article II, Section 2 of the Treaty in question here provides, in relevant part:

> "No public authority in the territory of either Party shall impose upon hydrocarbons in transit any import, export or transit fee, duty, tax or other monetary charge. . . ."

"Hydrocarbons in transit" are further defined in Article I(c) to mean:

> ". . . hydrocarbons transmitted in a 'Transit Pipeline' located within the territory of one Party, which hydrocarbons do not originate in the territory of that Party, for delivery to, or for storage before delivery to, the territory of the other Party."

The only pipeline currently existing in the State of Maine to which L.D. 1476 would be applicable is the Montreal Pipeline, which conveys oil from outside the United States to Canada. The oil in this pipeline would, therefore, appear to constitute "hydrocarbons in transit" within the meaning of the Treaty, an interpretation which a member of my staff has verified with the United States Department of State who negotiated the Treaty. The only question remaining, therefore, is whether the "privilege tax" which would be imposed by L.D. 1476 would be prohibited by Article III, Section 2 of the Treaty. On this point, it would appear that since the tax is computed on the basis of the volume of oil going through the pipeline (see § 2753 of the Bill), such a tax must be considered as being levied upon the hydrocarbons themselves and, therefore, would be prohibited by the Treaty. Thus, if the Treaty is ratified by the Senate and L.D. 1476 is passed by the Maine Legislature, the Maine legislation would be rendered unconstitutional.

Sincerely,

Joseph E. Brennan
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Attorney General

JEB/ec
cc: Honorable Glen W. Torrey