

# MAINE STATE LEGISLATURE

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*Federal Preemption Mobile Home Rules  
Mobile Homes Federal Preemption*

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AUGUSTA, MAINE 04333

January 3, 1978

Mr. George Hazel, Executive Secretary  
Oil Burner Men's Licensing Board  
4th Floor - State House Building  
Augusta, ME 04333

Re: Preemption of Board's authority over oil burning equipment  
in mobile homes

Dear Mr. Hazel:

This replies to your request for our opinion whether the board has authority to enforce its regulations concerning the installation of oil burning equipment in mobile homes. We advise that Maine regulations in this respect have been preempted by federal law. Section 604(d) of Title VI of the Housing and Community Development Act of 1974.

Section 604(d), provides:

"Wherever a Federal mobile home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish or to continue in effect, with respect to any mobile home covered, any standard regarding construction or safety applicable to the same aspect of performance of such mobile home which is not identical to the Federal mobile home construction and safety standard."

The Act gives the Secretary of Housing and Urban Development the responsibility for establishing such standards. Your board has adopted as a regulation the oil burning equipment installation standards set forth in National Fire Prevention Association Pamphlet 31 (1974). Likewise, the Secretary of HUD adopted these standards, however, effective December 5, 1977, the Secretary amended these installation standards with the following language: "Regardless of the requirements of the above referenced standards . . . the following are not required: (1) External switches or remote controls which shut off the burner or the flow of oil to the burner, or (2) An emergency disconnect switch to interrupt electric power to the equipment under conditions of excessive temperature." §280.707, HUD Mobile Home Construction and Safety Standards.

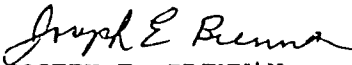
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Congress enacted Title VI pursuant to its power under the commerce clause of the Constitution. Article I, §8, cl. 3. Under the Constitution, laws constitutionally enacted by Congress have supremacy over state laws inconsistent with them. Article VI, cl. 2. See, Jones v. Rath Packing Co., 97 S. Ct. 1305 (1977).

While the language of §604(d), Title VI, seems to recognize that states may enforce regulations identical to those adopted by the Secretary, §623(b), requires states who wish to assume responsibility for enforcement to submit a plan to the Secretary. Should the board wish to assume enforcement responsibility for oil burner equipment installation in mobile homes, it should submit such a plan to the Secretary in conformance with the requirements of §623.

If this office may be of further assistance on this or other matters of concern, please let us know.

Sincerely,

  
JOSEPH E. BRENNAN  
Attorney General