

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

March 8, 1978

Honorable John L. Martin  
Speaker of the House  
State House  
Augusta, Maine 04333

Dear John:

I am writing in response to your letter of March 2, 1978, in which you requested an opinion as to the legality of the Maine Legislature's enacting legislation which would require that all lumber cut in Maine be hauled by Maine citizens in Maine registered trucks. At the outset I should note that the Attorney General's office is reluctant to provide its opinion on legislation which is not yet drafted. Problems of ambiguity and uncertainty are especially difficult without full legislative history to rely on. In addition, once enacted, a statute benefits from the presumption of constitutionality. See, e.g., State vs. Fantastic Fair and Karmil Merchandising Corporation, 158 Me. 450, 186 A.2d, 352 (1962). Furthermore, because of your need to have a prompt response, I was unable to engage in any extensive research on the matter. Nevertheless, preliminary review of the question indicates that there are serious constitutional concerns in the proposed legislation.

As you are aware, the constitution of the State of Maine provides in Article IV, Part 3, Section 1 that:

"The Legislature, with the exceptions herein-after stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States."  
(emphasis supplied)

The Constitution of the United States provides in Article I, Section 8, Clause 3 that the Federal Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States and with the Indian tribes." In an early decision the United States Supreme Court held unconstitutional a statute of the State of New York which granted a monopoly on the operation of steam propelled vessels on its water. Gibbons vs. Ogden, 9 Wheat. (22 U.S.) 1, 189 (1884). Since that time, the clause has been held to cover every species of movement of persons and things across state lines.

In addition, power has been specifically given to the Interstate Commerce Commission to regulate the transportation of persons and property by motor vehicle common carriers. See, e.g., the Motor Carrier Act of 1935, 49 Stat. 543 (1935). While State requirements that out-of-state vehicles register before operating within the State have been upheld as have certain special fee requirements, the suggested legislation appears to be a considerable restriction on interstate commerce which would conflict with the interstate commerce clause, which is meant to assure a uniform regulation and consistent national transportation policy. See, e.g., Capitol Greyhound Lines vs. Brice, 339 U.S. 542 (1950) and Hunter vs. Maryland, 325 U.S. 610 (1945). In addition to infringement on the constitutional provisions as to interstate commerce and federal pre-emption thereof, the suggested legislation also raises questions concerning the constitutional rights to travel and to due process.

Because of the short time available to us for research in this matter, we are reluctant to say unequivocally that the proposed legislation would be illegal or unconstitutional. Nevertheless, we perceive that there are very grave constitutional concerns raised by the proposed legislation. If you wish further information on the matter, please do not hesitate to contact us.

Very truly yours,

*Sarah Redfield*

SARAH REDFIELD  
Assistant Attorney General

SR:jg