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Statute Provisions relating to Federal Aeronautics
Legislation: Standards Title to Federal Regulations LK 2119

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AUGUSTA, MAINE 04333

March 15, 1978

Honorable John Jensen
House of Representatives
State House
Augusta, Maine 04330

Re: Certain Provisions of L.D. 2119, An Act to Revise Maine's
Aeronautics Laws.

Dear Representative Jensen:

Legislation has been proposed in L.D. 2119 § 33 which would adopt by reference and incorporate into the Maine general statutes regulations of the F.A.A., both as they now exist and as they may be amended in the future. You have asked whether there are any constitutional impediments to the legislature making such an adoption and whether this might involve an unconstitutional delegation of legislative authority to an outside body. I hope that the following discussion will be of some assistance to you.

In order to answer your question, I first examined the regulations of the F.A.A. and the C.A.B. as they applied to a commuter air carrier (taxi), in order to determine whether airports regularly served by commuter air carriers were already covered by Federal Air Regulations located at 14 C.F.R. Part 139. It would appear that commuter air carrier as they are defined in L.D. 2119 are not C.A.B. certificated air carriers and airports at which they regularly land are therefore not mandatorily covered by the provisions of 14 C.F.R. Part 139. As the regulation of these airports appears to be properly within State control, it is necessary to address the constitutional question.

There is clearly no constitutional impediment to the adoption by the Maine State Legislature of rules and regulations already in existence which were promulgated by an outside body. There may, however, be constitutional problems arising from the adoption of provisions which purport to adopt future amendments in addition to existing laws or regulations. The question of adoption of rules and regulations of an outside body was addressed in State vs. Vino Medical Company, 121 Me. 438 (1922). In that case the court was faced with the situation in which the Maine legislature had adopted a definition of intoxicating liquor which provided the definition under Maine Law would change "based upon the presence of a specified percentage of alcohol, then or thereafter declared by Congressional enactment or by decision of the

Supreme Court of the United States." The first question which the court was asked was whether there was any objection on constitutional grounds to the adoption by legislative enactment of any existing definition or standard enacted by Congress which definition would become fixed law in the State of Maine. The court responded that it was aware of no such objection.

With regard to the question of whether the Maine legislation was valid insofar as it purported to incorporate future enactments of Congress establishing a rule, test or definition, however, the court answered the question in the negative. The court found that

"Such legislation constitutes an unlawful delegation of legislative power, and an abrogation by the representatives of the people of their power, privilege and duty to enact laws." Vino, supra, 443.

The position taken by the court in the Vino case was incorporated in an opinion of this office to the Director of the Aeronautics Commission dated December 5, 1950, in which it was stated "To the extent such legislation contemplates that the law may change from time to time without further action of the Maine Legislature, such statute in Maine is definitely unconstitutional."

The case cited above, and this opinion, suggest that there may well be constitutional problems created by L.D. 2119, insofar as it purports to adopt Federal regulations both as they presently exist and as they may be amended, in those areas where the Federal regulations would not otherwise control. This problem is presented specifically in proposed section 101(1)(B), which reads

B. Commuter air carrier airports are those airports regularly served by commuter air carriers, which airports shall also meet federal air regulation, Part 139, or any subsequent revisions or amendments. The commissioner reserves the right to waive any requirement of Federal Air Regulation, Part 139.

The problem presented by this section can quite easily be eliminated by making the following change:

B. Commuter air carrier airports are those airports regularly served by commuter air carriers, which airports shall also meet such provisions of the federal air regulations, part 139, as are duly adopted by the Commissioner.

And by deleting the rest of that sentence and the following sentence.

I would also note that § 55(1) as proposed by L.D. 2119 grants to the Commissioner the authority to suspend or revoke a registration certificate issued by the Bureau of Aeronautics. This section of the statutes is not in accordance with the provisions of the Maine Administrative Procedures Act which provides that revocation or suspension of licenses, or in this case, certificates of registration, can only be done by the Administrative Court.

I hope that this information is helpful to you. If you would like further assistance, do not hesitate to call on me.

Sincerely,

Kate Clark Flora

KATE CLARK FLORA
Assistant Attorney General

KCF:jg