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Hazardous Materials Control Act W. Alexander
25 M.R.S.A. 2441
25 M.R.S.A. 2101 et seq

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May 17, 1978

Honorable Maynard G. Connors
Box 131
Franklin, Maine 04634

Dear Representative Connors:

This responds to your inquiry as to whether the provisions of P.L. 1977, c. 622 (L.D. 2040), The Hazardous Materials Control Act, apply to individuals transporting or storing primers and smokeless powder for their own private use in reloading firearm shells.

Although the statute is not entirely clear, the short answer to your question is that the Legislature did intend that Chapter 622 apply in full to such individuals.

It is first important to note that Chapter 622 supercedes the exception contained in 25 M.R.S.A. § 2441 (Supp. 1977). Section 2441 authorizes the Commissioner of Public Safety to regulate the

"keeping, possessing, storage, handling, dispensing or transporting from place to place in the State of all gunpowder, petroleum, coal oils, burning fluids, naphtha, benzine and all other explosives and illuminating substances which such commissioner believes dangerous to the lives or safety of citizens."

Paragraph two of § 2441 excepts from such regulations "the purchase, sale, transportation or storage of smokeless powder in amounts not in excess of 15 pounds, or primers not in excess of 1,000 in number."

However, Chapter 622 does not contain this exception for smokeless powder and primers and by its express terms, applies to hazardous materials designated by the United States Secretary of Transportation. While the original L.D. 2040 did contain the exception for smokeless powder and primers, the Legislature, through adoption of Committee Amendment "A", substantially rewrote the bill and removed the exception. This amendment was ultimately enacted as Chapter 622.

Chapter 622, as enacted, is not inconsistent with § 2441. The requirements of Chapter 622 supercede any regulations which the Commissioner of Public Safety is authorized to issue. Further, even if any inconsistency were suggested, the later enacted legislation - Chapter 622 - would prevail over prior law, § 2441.

Second, the Maine Act to Regulate Hazardous Materials and to Provide for a Reporting System to Hazardous Materials Emergencies, 25 M.R.S.A. § 2101, et seq., does "not apply to any person or transportation required under federal law to comply with the Hazardous Materials Act, Title 49 USC, section 1801 et seq., and regulations issued thereunder." I assume that the current amount of transportation in Maine of primers and smokeless powders for private use does not "exert a substantial economic effect on interstate commerce." Wickard v. Filburn, 317 U.S. 11, 125, 63 Sup. Ct. 82, 89, 87 L.Ed. 122 (1942). If this assumption is factually correct, then the activity of concern here falls outside the scope of the Federal Hazardous Materials Act and the regulations issued thereunder.

For activity beyond the scope of the federal Act, P.L. 1977, Chapter 622 will apply if the material transported has been designated a "hazardous material" by the United States Secretary of Transportation. Assuming you are concerned with small fire-arms (pistols, revolvers, rifles, or shotguns held by the hand or to the shoulder), both "small arms primers" and "smokeless powder for small arms" have been designated hazardous materials in 49 C.F.R. § 172.101. The former is a Class C explosive, and the latter, in quantities not exceeding 100 pounds, is a flammable solid. ("Small arms ammunition," as defined in § 173.100(5), is a Class C explosive.)

Once it is determined that a material has been designated a "hazardous material," the three requirements of the Maine Act apply. These requirements relate to:

1. Placarding of vehicles (25 MRSA §2104(1));
2. Bill of lading (25 MRSA §2104(2));
3. Accident reporting (25 MRSA §2105).

There is some ambiguity concerning the placarding requirements of section 2104(1). Section 2104, subsection 1 reads in full:

It shall be unlawful for a person to transport hazardous materials within the State unless:

1. Vehicle marking. The motor vehicle so transporting displays a placard or marking which shall be similar in size and contain the same information required by the Code of Federal Regulations, C.F.R., Title 49, section 177.823...

49 C.F.R. §177.823 states in full:

(a) A carrier may not move a transport vehicle containing a hazardous material unless the vehicle is marked and placarded in accordance with Part 172 of this subchapter, or unless, in an emergency --

- (1) The vehicle is escorted by a representative of a state or local government;

- (2) The carrier has permission from the department; or

- (3) Movement of the transport vehicle is necessary to protect life or property.

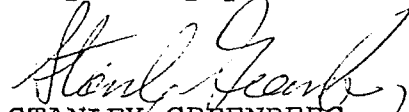
As one may see, §177.823 does not require a particular size of placard or certain information on a placard. These requirements are found in 49 C.F.R. Part 172. Section 177.823 primarily regulates "when" a carrier should placard his vehicle.

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It is difficult, therefore, to interpret the intent of the Legislature in including the reference to § 177.823. The legislative history of P.L. 1977, c. 622 offers no assistance. However, I believe a reasonable interpretation of § 2104(1) would be that the requirements of 49 C.F.R. § 177.823 shall apply to the placarding of a motor vehicle used by any person to transport hazardous materials.

Therefore, persons transporting hazardous materials who are subject to the Maine law must observe the placarding requirements of 49 C.F.R. Part 172 except in enumerated emergency situations.

Very truly yours,



STANLEY GREENBERG
Assistant Attorney General

SG/ec

cc: Colonel Allan H. Weeks