

MAINE STATE LEGISLATURE

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October 18, 1978

To: Henry A. Warren, Commissioner, Department of
Environmental Protection

From: Cabanne Howard, Assistant Attorney General

Subject: Constitutionality of Non-Importation of Waste

You have asked whether 17 M.R.S.A. §2253, which prohibits the importation of any kind of waste material into the State, is unconstitutional in view of the recent United States Supreme Court decision, Philadelphia v. New Jersey, U.S. _____, 57 L Ed 2d 475 (June 23, 1978). Our answer is that the Maine statute may no longer be considered constitutional.

The Maine statute in pertinent part provides:

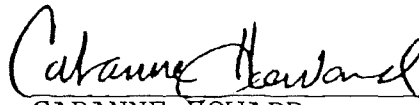
"No person . . . shall deposit . . . any waste material . . . within the State, which waste material originated outside the State." 17 M.R.S.A. §2253, ¶2.

"Waste material" is defined to include "garbage, refuse, solid or liquid waste, ashes, rubbish, industrial and commercial waste, and all other refuse of any kind. . . ." 17 M.R.S.A. §2253, ¶1 (emphasis added).

The New Jersey statute found unconstitutional in the Philadelphia case in pertinent part provides:

"No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, [unless authorized pursuant to regulation by the state Commissioner of Environmental Protection]." N J Rev Stat §13:II-10.

As may be seen by examining their texts, except for the New Jersey provision authorizing the Commission to make exceptions by regulation, the two statutes are identical. The Supreme Court invalidated the New Jersey Act as constituting an impermissible infringement upon interstate commerce, in violation of Article I, §8, cl 3 of the United States Constitution. It is difficult to see how it could reach a different result if presented with the Maine statute. See also Hardage v. Atkins, _____ F. 2d _____, 12 ERC 1043 (10th Cir., Sept. 11, 1978), invalidating an Oklahoma statute prohibiting the importation of "refuse products, either solid or liquid" from states not having reciprocity agreements with regard to such waste with Oklahoma, relying on Philadelphia, supra.



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