Oil Burner Licensing Bd's Authority over Solar Equipment
32 MRSA 2301-5

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 19, 1978

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04330

Dear John:

This is in response to your letter of November 2, 1978, in which you requested an opinion of the Attorney General's Office as to whether the Oil Burner Men's Licensing Board (hereinafter sometimes referred to as "the Board") had exceeded its statutory authority by including solar equipment in its regulations governing accessory equipment. To the extent that the Board's regulations purports to cover anything except solar equipment which is accessory to oil burning equipment, they are beyond the scope of the authority of the Board. However, so long as the regulation is limited in applicability to solar equipment which is attached to, and has an effect on, oil burner equipment, as appears to be the case, the rules are within the purview of the Board.

As a general rule, administrative agencies may exercise

> "only that power which is conferred upon them by law. The source of that authority must be found in the empowering statute, which grants not only the expressly delegated powers, but also incidental powers necessary to the full exercise of those invested. * * * An authorizing statute grants such powers as may be fairly implied from its language. These powers are:
>
> 1. those necessarily arising from powers expressly granted.
>
> 2. those reasonably inferred from powers expressly granted.
>
> 3. those essential to give effect to powers expressly granted.
>
> A public body may employ means appropriate for the purpose of carrying out the authority directly conferred upon it." State v. Fin and Feather Club, 316 A.2d 351, 355 (Me., 1974).

The Board is empowered by statute to adopt "standards and rules and regulations as it shall deem necessary pursuant to the Maine Administrative Procedure Act, Title 5, § 8051, et seq., for the holding of examinations and for carrying out this chapter . . . . " 32 M.R.S.A. § 2353; see also 32 M.R.S.A. § 2402.

The statute itself provides the parameters of the term accessory equipment but does not specifically define the term. In determining whether the Board's definition is within the scope of the legislative delegation of rule-making authority to the Board several principles of statutory construction are applicable. As a general matter, absent any legislative definition, the terms of a statute are given meaning consistent with their context and construed in light of the subject matter and purpose of the statute. See Finks v. Maine State Highway Commission, 328 A.2d 791 at 798 (Me., 1974).

The purpose of the oil burner statute is clear on its face. The law was enacted to protect the public safety through supervision of the installation of oil burning equipment. This intention is further evidenced by the amendment of the statute to include coal and wood burning equipment. The regulation in question, which defines the term accessory equipment as it appears in relation to oil burning equipment, has the same purpose.

Where an administrative agency has adopted regulations interpreting its statutes, such actions are customarily given deference by the courts. See, e.g., In Re O'Donnell's Express, 260 A.2d 539 at 545 (Me., 1970) and Mottram v. State, 232 A.2d 809 at 816 (Me., 1967). Contemporaneous administrative interpretations of statutes are generally entitled to persuasive weight, particularly where it appears that the interpretation had evoked no adverse legislative reaction despite amendment of the statute in other respects. See, generally, United States v. Groupp, 459 F.2d 178 (1st Cir., 1972). This latter principle of statutory construction seems particularly applicable to the present case, in view of the legislative history of the development of the Board's powers. See, generally, Sands, 2A Sutherland, Statutory Construction (4th ed.) § 48.03, as to the general relevance of legislative history.

In order to place the regulation in question in context, it is necessary to review the legislative and administrative history of the Board's authority and actions. Prior to 1978, the statutory provisions governing oil burners applies only to "oil burner installations," which is defined as:

> "The installation, alteration or repair of oil burning equipment, including industrial, commercial and domestic type central heating plants, and domestic type range burners and space heaters and further including all accessory equipment, control systems, whether electric, thermostatic or mechanical, electrical wiring and connection therewith to a suitable distribution panel or disconnect switch, but excluding all other electrical equipment or work in the building or

> structure where the above equipment is installed, and shall include hot and cold water connections to existing piping in the same room but not beyond any existing branch connections supplying water," Title 32 M.R.S.A. § 2301 (emphasis supplied)

By regulation, the Board had defined the term "accessory equipment" as including but not being limited to

> "fans, blowers, pumps, motors, fuel valves, flow control valves, metering valves, heat reclaimers, solar equipment, stack dampers, fuel economizers, flue connectors, controls, combustion improvers, anti-pollution devices and draft inducers or regulators used on or in conjunction with oil burning equipment," Definitions, § 17 of Rules, Regulations & Standards adopted by the Board on December 8, 1977, effective January 31, 1978.

In 1978, the Legislature amended the jurisdiction of the Board to include regulation of coal and wood central heating equipment, which is defined as:

> "Any small heating plant equipped with a furnace or boiler using coal or wood, or both, as fuel and designed specifically to be attached to or as an integral part of a central heating distribution system. Fireplace stoves and radiant room heaters as defined by the National Fire Protection Association or Underwriters Laboratories, Inc. shall not be considered to be within the definition of central heating equipment," Title 32 M.R.S.A. § 2301.5.

The statute now prohibits the installation of oil burning equipment without prior approval of the Board and the sale of coal and wood central heating equipment without such approval.

Subsequent to the introduction of the 1978 amendment, but prior to its becoming effective on July 6, 1978, the Board adopted its current regulations which defined the term "accessory equipment" as:*

> "equipment which is connected to and has the potential to affect the operation of oil burning equipment and shall include but not be limited to fans, blowers, pumps, motors, fuel valves, fuel control valves, metering valves, heat reclaimers, solar equipment, stack

---

be noted

* It should perhaps/that this definition of "accessory equipment" does not apply to coal and wood burning equipment. Nor is the term accessory equipment included in the statutory definition thereof.

> dampers, fuel economizers, flue connecters, controls, combustion improvers, anti-pollution devices, draft inducers or regulators used on or in conjunction with oil burning equipment and solid fuel units on or attached to oil burning equipment," Section 17 of the Rules, Regulations and Standards of the Oil Burner Men's Licensing Board as published in their brochure under appropriation number 4117.1, dated 1978; Section 3 of Chapter 120 of said Rules as filed with the Secretary of State, adopted on January 31, 1978, effective June 20, 1978. (emphasis supplied)

Until the recent amendments as to coal and wood burning equipment, the provisions of those sections of Title 32 M.R.S.A. §§ 2301 and 2404 which define the Board's jurisdiction had addressed basically the same substantive area since 1967. A letter from Representative Huber to you, which you have included with your request to this office, provides a copy of a "first draft" of the amending legislation ultimately enacted by the last legislative session. In this "first draft," the term "solar panels" is included in the definition of accessory equipment. By the time the bill was printed as a Legislative Document (L.D. 2120 Second Regular Session, 1978,), the term "solar panels" had been omitted from the definitional section, see, § 7301.1 of L.D. 2120.

Aside from the Board's inclusion of solar equipment in its definition of accessory mechanisms, the legislative definition as it appeared in L.D. 2120 was virtually identical to the rule adopted by the Board. Had L.D. 2120 been enacted as proposed, it would be clear that the continued inclusion of solar equipment in the definitions adopted by the Board would have been beyond their authority. However, L.D. 2120 was amended by new draft and new title as Legislative Document 2176. No definition of accessory equipment was included in Legislative Document 2176; nor was the provision in which the term accessory equipment appears amended in any way. Instead, a new definition of coal and wood central heating equipment was added to the existing provisions of the Board's jurisdiction, together with an approval process for such equipment: see, 32 M.R.S.A. § 2301.5 and § 2301.A. Inasmuch as the first draft provided by Representative Huber was not put before the Legislature, and inasmuch as L.D. 2120 with its definition of accessory equipment was omitted completely when enacted in new draft, it cannot be clearly said that the continued use of the regulation cited above is beyond the authority of the Board. (See, generally, Sands., supra, § 48.12, as to the relative insignificance of the drafter's views in ascertaining legislative history, and § 48.18, as to the relevance of amendments to intended changes.)

In this context the Legislature's failure to adopt a contrary definition must be construed as an indication of the legislative intention not to change the Board's regulations (which, at the time of

legislative consideration, were broader than the current regulations). The legislative debate on L.D. 2120 and subsequently L.D. 2176 does not indicate otherwise. Generally debate focused on whether or not the bill regulated wood stoves and on the certification process for coal and wood burning equipment prior to sale. As such, the debate is not particularly enlightening on the question you have posed. The only reference of any help appears to be the somewhat indirect reference of Representative Howe to the existing powers of the Board. In legislative debate, he indicated that:

> "The Oil Burner Men's Licensing Board also has authority to require approval of anything that is added onto such oil burning devices, and coming into the marketplace now are all sorts of alleged energy saving devices, including additions on boilers or furnaces that would be cooked up in series of an oil burning furnace but which you use wood and sometimes coal or both. . . ." (emphasis supplied) Legislative Record, 1978, p. 478, commentary by Representative Howe.

With no other legislative history to rely on, failure to change the interpretation of the regulations which were in effect at the time of the amendment of 32 M.R.S.A. § 2301 remains as evidence that the Legislature acquiesced in their interpretation. See, In Re Spring Valley Development, 300 A.2d 736 (Me., 1973). Accordingly, in view of the preceding expressions of legislative intent and statutory construction, the regulations, as currently limited and qualified by the Board, are within the scope of authority of that Board pursuant to Title 32 M.R.S.A. § 2301 as currently enacted.

In addition to the question of statutory authority, Representative Huber's letter raises the question of the proper enactment of these regulations pursuant to the Maine Administrative Procedure Act. Consultation with the Office of the Secretary of State indicates that the regulations in question were filed there on June 20, 1978, prior to the effective date of the Maine Administrative Procedure Act. Accordingly, the rules were subject to Title 5 M.R.S.A. § 8057 concerning prior rules remaining effective. This section requires that such rules may remain in effect after July 1, 1979 if notice and opportunity for hearing was provided at the time of their adoption. Filings by the Board with the Secretary of State indicate that such notice was provided prior to the adoption of its rules on June 8, June 9 and June 10 of 1978, and that hearing was held in the State Office Building on June 20, 1978. The rules were approved by signature of Kate Flora of the Attorney General's Office and filed with the Secretary of State. Based on this information from the records of the Secretary of State, it appears that the rules were duly enacted.

If I can be of further assistance, please feel free to let me know.

Sincerely,

Sarah Redfield

SARAH REDFIELD
Assistant Attorney General

SR:jg
cc: Oil Burner Men's Licensing Board
Representative Sherry F. Huber