RICHARD S. COHEN
ATTORNEY GENERAL

JOHN M. R. PATERSON
DEPUTY ATTORNEY GENERAL

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

January 23, 1979

Honorable Laurence E. Connolly, Jr.
State House
Augusta, Maine 04333

Dear Representative Connolly:

This letter responds to your request for an opinion on the constitutionality of section 783(6) of the Financial Responsibility Act, 29 M.R.S.A. §781, et seq. (the "Act"), in light of Perez v. Campbell, 402 U.S. 637 (1971).

1. Conclusions

For the reasons explained below, we conclude that the last sentence of 29 M.R.S.A. §783(6) conflicts both with old section 17 of the Bankruptcy Act, 11 U.S.C. §35, and with sections 523 and 525 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§523 and 525. Therefore, under Perez v. Campbell, supra, it is unconstitutional as being in violation of the Supremacy Clause of the U.S. Constitution, Art. VI, cl. 2. We recommend that the Act be amended to give effect to a discharge in bankruptcy of a judgment debt.

2. Reasoning

a. Maine's Financial Responsibility Act

Under the Act, when a motor vehicle accident results in bodily injury, death or property damage of $200 or more, the police must file an accident report with the Secretary of State. Section 783(1) of the Act. The Secretary of State must then request the driver and owner of the motor vehicle, unless adequately insured for the accident, to furnish both:

(1) a written release of liability for damages resulting from the accident or sufficient security to satisfy judgments resulting from the accident, and

(2) proof of future financial responsibility, as defined by the Act -- generally insurance, a bond, or other proof of ability to respond in damages to accidents in the amount of $20,000 per person, $40,000 per accident and $10,000 for property damage. Sections 783(2)(A) and 787 of the Act. The failure of the driver and owner to comply with these requirements within 30 days results in a suspension or revocation of the driver's license and the owner's registration. Id.

The suspension remains effective until these requirements are satisfied, unless the injured parties fail to bring action within one year or a judgment resulting from the accident is satisfied. In either event, proof of financial responsibility is maintained. Section 783(6). The last sentence of section 783(6) then provides:

> A discharge in bankruptcy shall not relieve the judgment debtor from any of the requirements of this subchapter, except that 10 years after the date thereof a discharge in bankruptcy shall relieve the judgment debtor from any of the requirements of this subchapter. . . .

On its face, one significant purpose of the Act is to aid an injured party in obtaining compensation from an uninsured motorist. The statute also has the broader purpose of "protect[ing] the public from the damaging operation of any motor vehicles by any driver, the driving record of whom has justified proof of financial responsibility." Concord General Mutual Insurance Co. v. McLain, 270 A.2d 362, 365-66 (Me. 1970).

b. The Perez decision

In Perez v. Campbell, 402 U.S. 637 (1971), the Supreme Court concluded that Arizona's Motor Vehicle Safety Responsibility Act, similar in all material respects to Maine's Financial Responsibility Act, is unconstitutional under the Supremacy Clause to the extent that it provides that:

> [a] discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article. Ariz. Rev. Stat. §28-1163(B)

Looking to state court decisions, the Court described the principal purpose of the Arizona statute to be "the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons" and, after examining the statutory scheme, concluded that its "sole emphasis . . . is one of providing leverage for the collection of damages" as opposed to deterrence of irresponsible driving. 402 U.S. at 644-46. Turning to the Bankruptcy Act, the Court concluded that Congress intended to give debtors a "new opportunity" unhampered by most kinds of pre-existing tort judgments. 402 U.S. at 648. The Court then held that the effect of the Arizona statute's provisions denying the effectiveness of a discharge in bankruptcy frustrated the full effectiveness of the federal Bankruptcy Law and was therefore unconstitutional as being in violation of the Supremacy Clause of the U. S. Constitution.

In reaching this conclusion the Court expressly overruled two earlier Supreme Court decisions which had upheld similar statutes on the grounds that their primary purpose was to promote highway safety, as opposed to aiding the collection of debts, a purpose which was held not to frustrate federal law. In Perez the Court stated that "[w]e can no longer adhere to the aberrational doctrine . . . that state law may frustrate the operation of federal law as long as the state legislature in passing laws had some purpose in mind other than one of frustration." 402 U.S. 651-52. Rather, it is the effect of the state law that is controlling. The Court proceeded to rule that in any event both the purpose and effect of the Arizona law frustrated federal law. 402 U.S. at 652-54.

Four members of the Court dissented in part from the majority opinion. In their opinion, the earlier decisions of the Court should not be overrruled. They concluded, as in the case of the earlier rulings, that the Arizona statute, as applied to one responsible for an accident, responded to a legitimate concern for public safety with only a tangential effect upon bankruptcy.

c. Applicability of Perez

Although the Court was sharply divided, the Perez decision remains good law and clearly has the result of invalidating the last sentence of 29 M.R.S.A. §783(6).

The effect of the Maine statute in denying an owner or operator reinstatement of his license or motor vehicle registration by reason of an unsatisfied judgment, notwithstanding a discharge of the judgment debt by bankruptcy, is indistinguishable from the Arizona statute involved in Perez. The emphasis on providing leverage to the unsatisfied judgment creditor is slightly greater in the Arizona statute -- i.e., in Arizona the injured party may consent to reinstatement of a license or registration, provided proof of future financial responsibility is furnished, even if the judgment remains outstanding. However, the

impermissible effect of the Maine statute on the rights of a bankrupt is as immediate and forceful as the effect of the Arizona statute. In fact, one of the complaints of the dissent in Perez was that Arizona's statute has its counterpart in 44 other states, including Maine. (Opinion of Blackmun, J., 402 U.S. 657, 665-66, n. 6.)

On the other side of the question, the bankruptcy law has not been altered to remove the conflict. To the contrary, the incompatibility of the Maine statute and the bankruptcy law has been exacerbated by the Bankruptcy Reform Act of 1978, 11 U.S.C. §101 et seq. Section 523 in the new Bankruptcy Law substantially re-enacts section 17 of the law which was relied upon by Perez as expressing the "fresh start" purpose of bankruptcy. Moreover, section 525 of the new bankruptcy law (entitled "protection against discriminatory treatment") prohibits a state from revoking or suspending a license

> solely because such bankrupt or debtor . . . has not paid a debt that is dischargeable . . . under this title or that was discharged under the Bankruptcy Act.

The Maine statute would have precisely this effect if a driver or owner covered by the Maine statute could buy insurance or otherwise put up proof of financial responsibility for future acts but did not satisfy a judgment causing the revocation or suspension in the first place. Both the House and Senate Reports to the Bankruptcy Reform Act confirm that the intent of Congress, in enacting Section 525, was to "codif[y] the result of Perez v. Campbell, 402 U.S. 637 (1971). . . ." Senate Rep. No. 95-989, 95th Cong. 2d Sess. (1978) at 81; H.R. Rep. No. 95-595, 95th Cong. 2d Sess. (1977) at 165, [1978 Supp. Vol. 11C], U.S. Code Cong. & Ad. News, 83, 342.

d. Remedial Legislation

Arizona apparently has not yet amended its own legislation declared invalid by Perez. However, in the opinion of this office, the better course of action would be to recognize the Perez decision and section 525 of the Bankruptcy Reform Act by eliminating the offending provision. Remedial legislation could take the form of an act repealing the last sentence of section 783(6) and adding the words "or a discharge in bankruptcy" after the word "release" as that word appears in sections 783(2)(A)(1) and 783(6).

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

Sincerely,

RICHARD S. COHEN
Attorney General

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