

MAINE STATE LEGISLATURE

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*Motor Vehicle Inspection - numerous of regulations
Administration Procedure Act - suspension of rules*

*Message, January 27
79-9*

RICHARD S. COHEN
ATTORNEY GENERAL



JOHN M. R. PATERSON
DEPUTY ATTORNEY GENERAL

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

January 29, 1979

Honorable George Carroll
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Carroll:

You have requested an opinion of this office on the authority of the Commissioner of Public Safety, on his own initiative, to suspend any or all of his rules and regulations regarding motor vehicle inspection stations and motor vehicle inspection stickers.

To begin with, the Commissioner technically has no direct power over the motor vehicle inspection program. The program is by statute the province of the Chief of the State Police, 29 M.R.S.A. §§ 2122, 2124. Although the positions of Commissioner and Chief have often been held by the same individual, the two jobs are distinct and may be held by different people. The question, then, is more properly directed at the powers of the Chief of the State Police.

The Bureau of the State Police is a state "agency," 5 M.R.S.A. § 8002(2), for purposes of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8001, et seq. According to that Act, which became effective July 1, 1978, an agency "rule" includes the whole or every part of any regulation made by the agency, including the "amendment, supervision or repeal of any prior rule" for the purpose of enforcing or implementing the law the agency is administering. 5 M.R.S.A. § 8002(9).

The agency must give public notice at least 20 days "prior to the adoption of any rule," and may in its discretion hold a public hearing, although it can be required to hold a public hearing under some circumstances. 5 M.R.S.A. § 8052(1). A request by any five interested persons, for instance, would mandate a public hearing.

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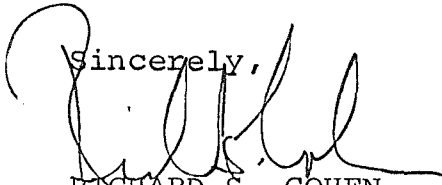
Because of the breadth of the definition of "rule," the phrase "the adoption of any rule" should be interpreted as including the suspension and modification of existing rules. The intent of the Act appears to be that the same requirement for the creation of new regulations should also be applied to suspension or modification of those regulations.

The Chief does have certain emergency rulemaking powers, however, under which he may promulgate regulations without affording public notice or hearings. He may exercise these only as is "necessary to avoid an immediate threat to public health, safety, or general welfare." Even under these circumstances, the modifications must be to the "minimum extent required" to "mitigate or alleviate the threat found." 5 M.R.S.A. § 8054(1). These emergency rules are valid for 90 days only, after which time they must be validated through the normal procedures.

Because emergency conditions do not appear to exist at the present, it is my opinion that the Chief cannot, simply on his own initiative, suspend his own rules and regulations covering the motor vehicle inspection program.

Finally, however, it should be noted that the regulations presently enforced were promulgated without prior public notice before July 1, 1978, and will become void on July 1, 1979, unless adopted through the proper notice and hearing procedures. 5 M.R.S.A. § 8057.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:mfe