

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

RICHARD S. GOHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

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

July 15, 1980

Dorothy Kelley
Executive Secretary
Maine Potato Council
P.O. Box 632
Presque Isle, Maine 04769

Dear Mrs. Kelley:

On behalf of the Maine Potato Council, you have inquired whether 25 M.R.S.A. § 2447-B prohibits the installation of foam plastic insulation without an approved thermal barrier in potato storage houses.^{1/} For the reasons set forth below, we conclude that the thermal barrier must be used in all areas within the potato houses where persons may work.

Section 2447-B.1A prescribes as a general requirement that:

" . . . The foam plastic shall be separated from habitable or occupiable spaces by an approved thermal barrier of 1/2 inch gypsum wallboard or equivalent thermal barrier material which will limit the average temperature rise of the unexposed surface to not more than 250° F. after 15 minutes of fire exposure complying with the ASTM-E-119 standard time-temperature curve. . . . " (emphasis added)

Subparagraphs (1), (3), (4), (5), (6) and (8) modify the "approved thermal barrier" requirement for the specific applications described therein. Unless the contemplated insulation usage and installation meet one of those specific

1/ Section 2447-B.1 prohibits the installation of "any type of foam plastic insulation unless that product complies with and is installed in accordance with the following requirements." The statute does not define the term "foam plastic insulation." However, we are advised by Barbara Niznick of Urethane Installations, Inc. (Brewer, Maine) that the foam plastics category of insulating materials includes urethane boardstock, urethane spray, all forms of expanded polystyrene (i.e., expanded and extruded boardstock) and urea formaldehyde.

exceptions, the general rule applies: an approved thermal barrier must separate the foam plastic from habitable or occupiable spaces.

We assume for purposes of discussion that none of these exceptions apply. We are further advised by Mr. Donald M. Bissett, State Fire Marshal, that no alternate installations applicable to potato houses have been approved pursuant to subsection 2 except for very minor repairs to plastic foam installed without a thermal barrier prior to the effective date of § 2447-B. The crux of your inquiry thus turns on whether or not a potato storage house is a "habitable or occupiable space."^{2/} More specifically, since potato storage houses are not used as places of habitation, the key to resolving your question hinges on the meaning of "occupiable."

As a preliminary matter, we would note that "occupiable," which is not defined in the statute, is an ambiguous term, at least as used in § 2447-B. We recognize that based solely on definitions found in the dictionary, it is possible to argue that "occupiable" encompasses only those places which are capable of use as residences.^{3/} For reasons we shall proceed to explain, however, we do not believe that the Legislature intended to give the term such a narrow meaning.

We must commence our analysis with the fundamental principle of statutory construction that nothing in a statute may be treated as surplusage if a reasonable interpretation supplying meaning or force is otherwise possible. See, e.g., Labbee v. Nisson Corp., 404 A.2d 564, 567 (Me. 1978); State v. Tullo, 366 A.2d 843, 848 (Me. 1976). Applying this principle to the phrase in question, "habitable or occupiable spaces," the argument for a broader reading of "occupiable" becomes clearer. If "occupiable" is deemed to include only places capable of residential uses, then

^{2/} The legislative history sheds little light on this issue. 25 M.R.S.A. § 2447-B was introduced as L.D. 779. With but one minor change made by Committee Amendment H-198, it was passed in the same form (P.L. 1979, c. 167). There is no recorded debate.

^{3/} One common definition of "occupy" is "to reside in as an owner or tenant." Webster's Third New International Dictionary, unabridged, G. & C. Merriam Company (Springfield, Mass. 1963). See also, Op. Atty. Gen. 79-29.

the term becomes surplusage, insofar as it adds nothing which is not already contained in the phrase "habitable spaces." Thus, a different interpretation of "occupiable" is necessary to avoid rendering the legislative language a nullity.

In attempting to ascertain the intended meaning of "occupiable," we have discovered only one instance in which the word is used in an analogous context. This usage appears in the model statute published by the Building Officials and Code Administrators International, Inc. ("BOCA"). Section 201 of the BOCA Basic Building Code defines "occupiable room" as follows:

"A room or enclosed space designed for human occupancy in which individuals congregate for amusement, education or similar purposes or in which occupants are engaged at labor. . . ." (emphasis added)

Further support for this reading is found in the "Code for Safety to Life from Fire in Buildings and Structures," promulgated by the National Fire Prevention Association ("NFPA") in 1976. That Code defines the term "occupancy" in an even broader manner, namely, as "the purpose for which a building or portion thereof is used or is intended to be used."

The above discussion reveals that when used in building and fire codes, the concept of "occupiable" has a technical meaning which is not limited to places capable of residential usage. Since 25 M.R.S.A. § 2447-B.1 is designed to insure fire safety in buildings, we believe it appropriate to interpret that statute in accordance with such accepted technical definitions. Cf. State v. Vogl, 149 Me. 99, 109 (1953).^{4/}

The limited legislative history of § 2447-B.1 also suggests an intent to apply the thermal barrier requirement to more than simply residential structures. The Statement of Fact to L.D. 779, which was enacted as 25 M.R.S.A. § 2447-B, provides as follows:

4/ Reliance on the BOCA and NFPA Codes is particularly appropriate in light of the fact that the Maine Legislature has expressly recognized both as establishing acceptable standards for building and fire safety. See 5 M.R.S.A. § 1742.6A and 25 M.R.S.A. § 2396.6. In addition, the Department of Public Safety has by regulation incorporated the NFPA Code into what is in effect a statewide fire code. See 160219 CMA chapter 29.

"The purpose of this bill is to require that foam plastic insulation sold in Maine meet the minimum fire resistant, corrosion resistant and thermal resistant requirements necessary to protect the health and safety of the purchasers."

While not addressing the specific question at issue, the above language indicates a broad purpose to protect health and safety. Given that purpose, a broad reading of "occupiable spaces" is compatible with the canon of statutory construction that ambiguous language be construed in a manner most consistent with the overall purpose of the legislation of which it is a part. See, e.g., Church v. McKee, 382 A.2d 290 (Me. 1978).

Finally, our view of the Legislature's intent is reinforced by an examination of two other insulation-related bills which were passed in the First Session of the 109th Legislature, P.L. 1979, c. 212 (codified as 10 M.R.S.A. § 1485) requires persons installing insulation in any residence to furnish the owner or lessee with a certain informational pamphlet before contracting to do the job. Similarly, the title of P.L. 1979, c. 154, "An Act Concerning the Degree of Flammability of Insulation Installed in Residences" limits the scope of that enactment.^{5/} The lack of any such restriction in P.L. 1979, c. 167 indicates that the thermal barrier requirement of the foam plastic insulation statute was not intended to apply solely to residential buildings.^{6/}

For the foregoing reasons, it is our opinion that unless one of the specific exceptions contained in 25 M.R.S.A. § 2447-B is met,

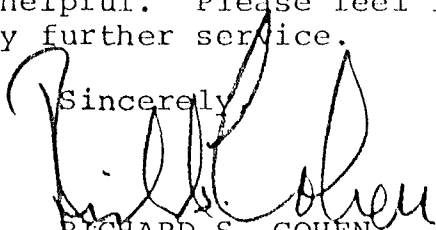
^{5/} The statute amended by P.L. 1979, c. 154 also applies only to residences. See 10 M.R.S.A. § 1482.

^{6/} Resort to statutes on the same subject matter as an extrinsic means of statutory construction is particularly appropriate where, as here, the related statutes and the statute under examination were all enacted at the same legislative session. 2A Sands, Sutherland's Statutory Construction § 51.03, p. 299 (4th ed.). See also Erlenbaugh v. United States, 409 U.S. 239, 243-44 (1972).

an approved thermal barrier must be used in conjunction with urethane insulation installed in all areas in which persons work within potato storage houses. The extent to which some areas of certain types of potato houses may be non-occupiable spaces is an issue which we do not have sufficient information to address at this time.^{7/}

I hope this response is helpful. Please feel free to contact us if we can be of any further service.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC/ec

^{7/} Our opinion does not purport to indicate all circumstances in which the thermal barrier requirement would apply, a subject of potentially unlimited scope, but rather to address the specific problem which we understand prompted your inquiry.