

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

August 17, 1982

Honorable Linwood F. Ross
Deputy Secretary of State
Maine Department of State
DOT Building
1 Child Street
Augusta, Maine 04333

Dear Deputy Secretary of State Ross:

This will respond to your memorandum of June 30, 1982, in which you asked whether the fuel use identification decal requirements of 29 M.R.S.A. § 246-A apply to motor vehicles which may be exempted from the Gasoline Road Tax reporting requirements of 36 M.R.S.A. Chapter 453 by the State Tax Assessor, acting pursuant to the third sentence of 36 M.R.S.A. § 2965. For the reasons which follow, we answer in the affirmative.

Title 29 M.R.S.A. § 246-A provides, in pertinent part:

1. Application. Notwithstanding any other provision of law, a person owning, operating or causing operation of a vehicle on the highways of this State, subject to Title 38, chapter 453, . . . shall apply to the Secretary of State for a fuel use identification decal for each vehicle covered by such reports or licensing requirement.

2. Vehicles requiring a fuel use identification decal. The following vehicles require a fuel use identification decal:

A. Gasoline powered vehicles used for the transportation of property or passengers for hire as a contract or common carrier;

B. All other gasoline powered motor vehicles or combinations of vehicles which are registered for a load of over 10,000 pounds or for a gross weight of over 20,000 pounds; . . .

This provision was enacted in 1982, P.L. 1981, c. 689, § 1, as the Legislature's response to the decision of the Supreme Judicial Court of Maine, American Trucking Associations, Inc. v. Quinn, 437 A.2d 623 (Me. 1981), invalidating a predecessor statute, enacted by P.L. 1981, c. 492, pt. E, § 9, as violative of the Commerce Clause of the United States Constitution, U.S.CONST., art. I, § 8, cl. 3, because it imposed fees for highway use which discriminated between "foreign-based" and "Maine-based" trucks. See Emergency Preamble to Legislative Document 2125, 110th Maine Legislature (1982). The provision is somewhat ambiguous on its face. On the one hand, it provides that all gasoline powered vehicles used for hire and all other vehicles in excess of a certain size must obtain a fuel use identification decal. 29 M.R.S.A. § 246-A(2)(A) and (B). On the other, it provides that all vehicles "subject to chapter 453" of Title 36 obtain such a decal. 29 M.R.S.A. § 246-A(1). The problem which you raise arises because Chapter 453 of Title 36, the subject of which is a Gasoline Road Tax which has been in effect in Maine for several decades, contains a provision, in Section 2965 thereof, which authorizes the exemption by the State Tax Assessor of certain "carriers operating exclusively within the State and using only motor fuel purchased within the State" from payment of the tax. The question presented, therefore, is whether, in enacting the new version of Section 246-A of Title 29, the Legislature intended, through its reference to Chapter 453 of Title 36, to exempt from the fuel use identification decal requirement carriers who have been exempted by the State Tax Assessor from the Gasoline Road Tax.

We do not think the Legislature so intended. In the first place, to find such an intention would require that we ignore the express provisions of Section 246-A(2)(A) and (B) which

impose the decal requirement without exception on all vehicles for hire or above a certain size,^{1/} and find an exemption for certain vehicles from the decal requirement because of a reference contained in § 246-A(1) to another part of the Maine code which contains such an exemption. We cannot believe that the Legislature intended to undo, in such an indirect manner, in sub-section 246-A(1) what it expressly did in sub-section 246-A(2).

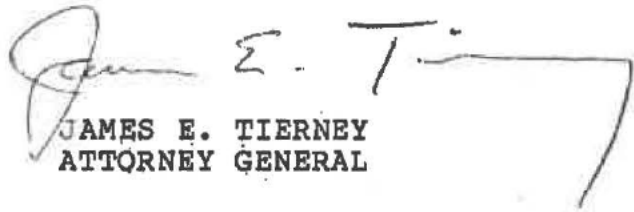
Moreover, the existing legislative history supports this interpretation. The effect of finding an exception to Section 246-A would be to reinstitute a discrimination between in-state and out-of-state trucks. But, as indicated above, the Legislature was expressly trying to avoid such a discrimination. As the Statement of Fact accompanying the bill which contained the new Section 246-A put it, "this fee [for the decal] will apply to both Maine registered trucks and those registered in other states. The original [and now invalidated] legislation provided for a \$3 fee for Maine trucks and \$40 for out-of-state trucks." 110th Maine Legislature, Legislative Document 2125 (1982). Thus, the Legislature manifestly did not intend to discriminate.

Finally, even if the Legislature did intend to discriminate, such discrimination would be unconstitutional. See American Trucking Associations, Inc. v. Quinn, supra. The Courts, however, accord all statutes a strong presumption of constitutionality, Orono-Veazie Water District v. Penobscot County Water Company, 348 A.2d 249 (Me. 1975); Union Mutual Life Insurance Company v. Emerson, 345 A.2d 504 (Me. 1975); and if a statute is susceptible of two constructions, one of which will render it unconstitutional, the construction that will render the statute constitutional will be adopted. In re Stubbs, 141 Me. 143, 147 (Me. 1944); See also New England Telephone and Telegraph Company v. Public Utilities Commission, 376 A.2d 448 (Me. 1977); Clark v. State Employees Appeals Board, 363 A.2d 735 (Me. 1976). Thus, even if the Legislature intended to effect a discrimination against out-of-state truckers in Section 246-A, we would be obliged to construe the statute, if possible, to avoid such a result.

^{1/} Significantly, the scope of Section 246-A for gasoline powered vehicles is exactly the same as Chapter 453 of Title 36. See 36 M.R.S.A. § 2961 (defining "motor carriers" to include those persons using vehicles for hire) and § 2971 (applying the Gasoline Road Tax to vehicles of the same capacity as those specified in § 246-A(2)(B)).

I hope this answers your questions. Please feel free to reinquire if future clarification is necessary.

Sincerely,



JAMES E. TIERNEY
ATTORNEY GENERAL

JET/dab

cc: R. L. Halperin, State Tax Assessor
Col. Allan H. Weeks, Chief, State Police