



MAINE OIL DEALERS ASSOCIATION

TECHNICAL BULLETIN #9.2

GASOLINE-HEATING OIL MARKETING ISSUES

July 9, 1991

This bulletin outlines and clarifies two laws passed in the Second Regular Session of the 113th Maine Legislature, L.D. 2356 entitled, "AN ACT to Require Service Stations to Post the Price of Fuel Sold," and L.D. 2047, "AN ACT to Require Gasoline Stations which Provide Self Service at a Lower Rate to Provide the Same Rate for Handicapped Drivers." These laws took effect on August 1, 1988. The Bulletin also covers a law passed by the Second Regular Session of the 114th Maine Legislature, L.D. 2176, "AN ACT to Require Prior Notice of the Sale of Gas Stations." This bulletin also covers a law passed by the First Regular Session of the 115th Maine Legislature, L.D. 1869, "AN ACT Concerning Acquisition of Heating Oil Assets."

1. L.D. 2356 "AN ACT to Require Service Stations to Post the Price of Fuel Sold."

10 M.R.S.A. §1661-A

The language of the statute reads,

"A retail seller of fuel to be used by vehicles on the public highways shall post the price on each pump of the fuel available at that pump

by a sign no less than 64 square inches and in a manner that is clearly visible to a driver approaching the pump. On multi-grade pumps, the posted price shall be for unleaded regular gasoline. The sign should indicate the difference in price for full-service, mini-service and self-service if more than one grade of service is available at that pump."

Clarification is needed on the following points about this law:

1. A 64 square inch sign is intended to be a sign **at least 8 inches by 8 inches in size.**
2. Multi-grade pumps must post the price of unleaded regular gasoline, which is intended to mean gasoline with an octane rating of 87.
3. The requirement to post prices means on all pumps of motor fuel sold, including diesel fuel. This does not include Kerosene.
4. Posting prices on all pumps used to dispense motor fuels means ALL PUMPS used to dispense motor fuels.

Questions have been raised concerning the possibility that this new sign requirement runs into conflict with 23 MRSA §1914, Sub-§ 2, "Maine Information Services Act," which limits the number of on-premises signs, and also 23 MRSA §1908, "Regulation of Outdoor Advertising," which regulates signs visible to the travelling public.

The Maine Department of Transportation has written to the President of the Maine Oil Dealers Association on February 18, 1988, at the Maine Oil Dealers Association's request, providing an opinion as to whether the requirements of L.D. 2356 [originally L.D. 2047 by reference in the letter] would conflict with other Maine sign regulations or statutes.

The Maine DOT stated that the new sign law did not conflict with other statutes, and went on to state that municipalities could not count these new signs as "on-premises" signs as the vast majority of pumps are outside of 30 feet from the centerline of the highway.

Any questions concerning the applicability of this statute may be directed to the Maine Oil Dealers Association. Any questions concerning the applicability of other state laws concerning on-premises signs may be directed to Miss Jane Lincoln, Maine DOT, State House Station 16, Augusta, Maine.

2. L.D. 2047, "AN ACT to Require Gasoline Stations which Provide Self Service at a Lower Rate to Provide the Same Rate for Handicapped Drivers." 10 M.R.S.A. §1661-B

The language of this statute reads, "Every full-service gasoline station offering self-service pumping at a lesser cost shall require an attendant employed by the station to dispense gasoline to any motor vehicle..."

The key here is that the station in question must:

1. Be a full serve as well as a self serve station; and
2. Offer the self-serve gasoline at a cost lower than the full service gasoline.

If the station in question does not meet the tests of #1 and #2 above, the law does not apply.

If the station in question does meet these tests, there are additional safeguards to protect the station owner or operator before the attendant must pump the gasoline at the self-service price:

The driver seeking the lower price must:

1. Be in a vehicle displaying a handicapped placard or

special designation plates; and

2. Must possess a drivers license with the designation

"CODE H" on the license; and

3. Have no non-handicapped adult in the motor vehicle

capable of pumping the fuel for the driver.

Failing any one of these tests and the station attendant does not have to provide full-service at the self-service price.

3. L.D. 2176, "AN ACT to Require Prior Notice of the Sale of Gas Stations."

10 M.R.S.A. §1109 [1989], and L.D. 1869, "AN ACT Concerning Acquisition of Heating Oil Assets." 10 M.R.S.A. §1109 [1991].

This legislation arose from MODA's work to defeat refiner divorcement in the Special Legislative Session held during the Fall of 1988. In exchange for withdrawing the divorcement bill, legislators held that Maine's Attorney-General should investigate the competitiveness of Maine's motor fuels market and report

back to the Legislature with his findings. The resolution which passed the Legislature requesting the investigation was drafted by MODA.

The result of the Attorney-General's findings were inconclusive and the AG requested that data be collected on the degree to which consolidation may be occurring in the motor fuel markets. In addition, the AG sought the authority to review service station purchases prior to closing in order to give him time to determine the degree to which purchases may violate Maine's anti-trust statutes.

In 1991 the Attorney-General, working with MODA on the issue of consolidation within the heating oil industry, broadened the 1989 statute to include a requirement that anyone purchasing a business engaged in heating oil sales also must report such a pending purchase to the Attorney-General.

The new law requires that;

1. At least thirty (30) days in advance of acquiring the controlling stock of or the substantial assets of a company engaged in retail gasoline sales or heating oil sales, the purchaser must notify the Attorney General of the State of Maine. This time period may be shortened by the Attorney-General.
2. Failure to provide this notice carries a potential civil penalty which may not exceed \$10,000 - in addition to potentially having the sale nullified under anti-trust statutes.

The new law carries a confidentiality section which requires that the information the purchaser provides to the AG constitutes a confidential investigative record under 5 M.R.S.A. §200-D, and is not within the public domain. This section protects the parties involved from public discourse regarding the potential sale, or in any way releasing information which could place the sale in jeopardy. This

section was added to the law at MODA's request and after MODA presented an amendment to the bill in committee.

Information regarding the purchase of assets of a company engaged in the retail sale of gasoline or heating oil should be forwarded to:

Office of the Attorney General

Division of Anti-Trust and Consumer Affairs

The State Office Building

Augusta, Maine 04330

(207) 289-3661