

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE

**Reports  
to the  
*ONE HUNDRED AND FOURTH LEGISLATURE*  
Volume Two**

*January, 1969*

Legislative Research Committee

Publication 104-20 (Vol. II)

## LEGISLATIVE RESEARCH COMMITTEE

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 Resigned August 14, 1968  
 Senator Kenneth P. MacLeod, Brewer, Chairman  
 Elected September 19, 1968  
 Representative Samuel A. Hinds, Vice Chairman

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## Office of Legislative Finance:

Frederick W. Kneeland, Augusta, Finance Officer  
 Resigned July 12, 1968  
 William H. Garside, Augusta, Finance Officer  
 Appointed July 17, 1968  
 Samuel A. Hinds, Assistant Finance Officer  
 Appointed November 20, 1968; Effective, January 1, 1969

## LETTER OF TRANSMITTAL

January 15, 1969

To the Members of the 104th Legislature:

As Chairman of the Legislative Research Committee of the 103rd Maine Legislature it is with great pride and pleasure that I present a cumulation of findings and recommendations that we as a Committee have developed on our assigned subjects during the past biennium.

This, the second of three volumes, designated as Legislative Research Committee publication 104-20 (Vol. II), combines in a single publication the findings and recommendations developed in nine specific areas of study which are individually reported in committee publications numbered 104-11 through 104-19.

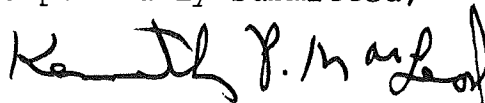
On behalf of the Committee and myself, I would like to take this opportunity to extend our grateful appreciation to Horace A. Hildreth, Jr., formerly our Committee Chairman, to Roger V. Snow, Jr., a former member of the Committee and to Frederick W. Kneeland, the former Legislative Finance Officer, each of whom resigned during the interim after having so faithfully served this Committee.

I also extend, on behalf of the entire Committee, our sincere gratitude and appreciation to the Committee, staff, to the news media and to the many private citizens, organizations and employees of the State, without whose endless cooperation and dedicated

service the Committee could not have reached its conclusions.

The members of the Committee further wish to express their appreciation for being chosen to participate in these assignments and sincerely hope the reports contained herein will prove of benefit to the Members of the Legislature and the people of the State of Maine.

Respectfully submitted,

A handwritten signature in black ink, reading "Kenneth P. MacLeod". The signature is written in a cursive style with a large, stylized initial "K".

KENNETH P. MACLEOD, Chairman  
Legislative Research Committee

PROPOSED BILLS TO BE SUBMITTED TO THE 104TH LEGISLATURE

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STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON  
OPERATION OF STATE LIQUOR COMMISSION  
to  
ONE HUNDRED AND FOURTH LEGISLATURE

JANUARY, 1969  
Legislative Research Committee  
Publication 104-11



SUBCOMMITTEE ON OPERATION OF STATE LIQUOR COMMISSION

CHAIRMAN - William E. Dennett

VICE CHAIRMAN - David J. Kennedy

Samuel A. Hinds

Louis Jalbert

Harvey Johnson

Raymond M. Rideout, Jr.

Horace A. Hildreth, Jr., Ex Officio

Kenneth P. MacLeod, Ex Officio

ORDERED, the Senate concurring, that the Legislative Research Committee be directed to study the financial policies, methods of dispersing funds, revenues and expenditures of the State Liquor Commission, and be it further

ORDERED, that the Committee be directed to report the results of such study, together with any necessary recommendations, to the next regular session of the Legislature.

The subject of spirituous and vinous and malt liquors, their regulation and control, have long been controversial matters in the State of Maine. Such topics continue to stir the emotions of many people in this State both pro and con.

Maine was one of the first states to invoke a "prohibition law" and although it was flagrantly flaunted over a period of years attempts were made to enforce it. With the advent of national prohibition, it became more enforceable but Maine shared, with her sister states, the many problems of that era.

With the repeal of national prohibition Maine followed the lead of most of the states and legalized the sale of intoxicating beverages. Maine became one of the states that sought to control the sale of so-called hard liquor by making sales of all bottled goods through stores controlled by the State Liquor Commission. The states that operated in this manner were in the minority, most states operating by open sale with privately owned stores.

Even with the repeal of prohibition, Maine having long cast a jaundiced eye on the sale of intoxicants, was prone to write into its liquor laws many conditions. These conditions were intended to control the seller and by so doing perhaps retarded sales.

While many of these laws and State Liquor Commission rules set up to administer the law were controlling by nature, they did little or nothing to deter the sale of liquor nor did they

substantially solve any of the problems connected with sales.

Many of the conditions the State faced in the early thirties no longer exist and the subject matter of some of the laws and many of the rules are no longer applicable.

Maine is unquestionably a "tourist state," the people deriving a large part of their income from this industry and the state a goodly portion of its revenue therefrom.

It would seem that in light of the foregoing the State should take steps to modify some of its present laws, to update those that are truly archaic and eliminate those that serve no useful purpose. It was to this end that the Legislative Research Committee, through a special subcommittee, entered into a most extensive and comprehensive study of the entire operation and function of the State Liquor Commission. Hearings were frequent and lengthy. Testimony was received from persons in all walks of life, from those interested in the industry and from those who were opposed to the very existence of alcohol. The Committee received and heard witnesses whose testimony was highly relevant to the subject at hand and others who wandered far from the subject. Each was heard in his own way and all that would speak were heard.

The first hearing of the Committee was held September 6, 1967, in Augusta. This hearing was mainly for the purpose of ascertaining

the business and fiscal policy of the commission. Members of the commission were heard along with testimony by Mr. Cranshaw and Mr. Davala from the Bureau of Accounts and Control. Reports were submitted, in detail, relative to the operation of each store under the supervision of the Liquor Commission as well as an overall accounting of the commission itself. Subsequent to this hearing the members of the subcommittee were empowered to visit state stores, appraise inventories, inspect accounts and ask questions. Committee members visited stores in their respective areas and reported their findings.

#### CONCLUSION

The stores operating under the control of the Maine State Liquor Commission are well managed and operating under the rules of acceptable business practices.

#### RECOMMENDATIONS - None

At the next hearing of the subcommittee, held in Augusta, the question relative to the sale of wine in grocery stores was brought before the Committee. It was revealed that several control states permitted the sale of table and desert wines, wines not containing more than 14% alcohol by volume, in stores other than state operated stores. The reasons given being that many of these wines are used for culinary purposes and not as

beverages. In states where such sales are permitted in retail outlets no problem has been posed. Young or would-be drinkers shy from this type of wine because of its sweetness and sickening effect when consumed in quantity and those who might be addicted to wine prefer a heavier or fortified type over 14%.

It was also disclosed that the central warehouse, at Augusta, operated by the Maine State Liquor Commission, suffers from a lack of space and in the event that the sale of wine, of 14% or less by volume of alcohol, is permitted in retail stores or other than state stores a sizable amount of space would become available which the commission could better utilize and also it would eliminate a low profit item from their direct supervision.

It was agreed at this meeting that the subcommittee would make arrangements to visit the Vermont Liquor Commission at Montpelier at an early date.

On October 6, 1967, the subcommittee traveled to Montpelier and was received by Mr. Roger Sheridan and his staff. The operation in that state was fully explained, their rules and regulations, as well as their laws, were examined and their warehouse inspected. A discussion with the chief enforcement officer revealed that the sale of this type wine, namely 14% or less by volume of alcohol, presented no problem in Vermont.

#### CONCLUSION

Inasmuch as the sale of table and desert wines, of low

alcohol content, present no problem in those states that permit such sale through retail outlets, in all probability similar outlets would have no adverse effect in Maine.

RECOMMENDATION - None

At a subsequent hearing held in Augusta, members or representatives of the malt beverage industry were invited to attend and offer any testimony they desired relative to the operation of the State Liquor Commission and to how their industry was affected.

At this hearing a question arose relative to the promulgation of the rules by the commission and whether or not they were operating within the scope and meaning of Title 5, chapters 301 to 307, known as the Administrative Code. The 101st Legislature, by enacting chapter 412, public laws, 1963, had specifically added the Maine State Liquor Commission to those agencies and commissions which were subject to the Administrative Code, yet the State Liquor Commission clearly was not promulgating its rules in accordance with the provisions of that Act and neither was it clearing its rules through the office of the Secretary of State as provided.

Also at this hearing the question arose as to the authority of the chief enforcement officer.

As a result of a unanimous vote of the Committee it was decided to pose questions to the Attorney General and request his opinion.

Question No. 1

Do the procedures for the adoption, filing and taking effect of rules and regulations of "agency" under the Administrative Code apply to the State Liquor Commission?

Question No. 2

Does the State Liquor Commission have direct authority over the Enforcement Division of the State Liquor Commission?

On February 29, 1968, the Attorney General answered in the affirmative to both questions. For the full text of his decision see Appendix A.

The outcome of this particular phase of hearings was that the State Liquor Commission acknowledged their position under the Administrative Code and agreed that it would be strictly followed in future promulgation of rules.

During the late winter and early spring a series of area hearings were held in various cities throughout the State. These hearings were supposedly confined to the laws pertaining to the sale of alcoholic beverages and to the existing rules and regulations of the State Liquor Commission. These hearings were well attended and basically the witnesses adhered to the subjects at hand. The first of these hearings was held in Augusta, on February 21, 1968, followed by Lewiston, March 7, 1968, Portland, March 20, 1968, Presque Isle, March 28, 1968 and in Bangor, April 3, 1968.

The testimony offered at these hearings ranged from the



sublime to the ridiculous but out of them came many sound and thoughtful suggestions particularly in regard to proposed changes in the rules and regulations of the State Liquor Commission.

The net result of this series of hearings was that the Committee compiled a list of the many suggestions offered by the several participants which in turn were discussed with the members of the State Liquor Commission. The commission agreed to study the proposed changes and to adopt those which in their opinion were feasible. On June 14, 1968, some twenty changes in the rules were adopted and published by the commission; they are as follows:

Former Rule 4 was deleted in its entirety as it was covered in other sections.

Former Rule 6 was replaced by a new Rule No. 5 which allowed certain mechanical devices on licensed premises provided they are in no manner used for gambling purposes.

Former Rule 11 was replaced by Rule 10. The only change in this Rule was made by striking out the words "alcoholic liquors" and substituting the word "liquor" instead. This change is only technical and in no way changes the substance of the Rule.

Former Rule 12 was deleted. This Rule was highly criticized for in its broad interpretation it forbade any licensee to sell any type of beverage other than that for which he was licensed. This Rule, if carried to its ultimate conclusion, could have denied a licensee who was licensed to sell malt liquors the right to sell coffee, tea, milk, etc.

Former Rule 13 was not changed but its provisions are now divided into two separate rules, numbered 11 and 12.

Former Rule 15 was changed to Rule 14 and is identical with the old Rule except for enlarging the commission's authority with the right of access to additional premises where empty containers are stored.

Former Rule 16 was changed to Rule 15. It is identical with the old Rule with the exception that the following wording has been removed: "and liquor shall not be consumed by any person in said rooms except while sitting, and no person shall be permitted to walk around said rooms with liquor."

Former Rule 17 was changed to Rule 16 and the new Rule permits not more than two drinks before any one person at any one time. It also spells out the size of the bottle or container that might be set before any one person.

Former Rule 18 is now Rule 17. This Rule which regulates the employment of minors as entertainers on licensed premises has been amended to exclude the employment of males under twenty-one or females of any age in taverns. It also prohibits persons in the foregoing category from entering taverns.

New Rule 20 replaces former Rule 21 and relates what shall be considered to be a bona fide restaurant for the purpose of being licensed to sell malt liquor. While the old rule specified that a restaurant have facilities to serve 60% of its seating capacity and have on hand at least \$2 in food at wholesale per seating capacity the new rule goes further. It states that

in addition to the Rule relative to capacity, a malt liquor restaurant must maintain at least 10% on a monthly basis of the total volume of business from the sale of food. It must also keep records to so indicate. It also states that for the purpose of this Rule soft drinks shall not be considered food.

New Rule 25 replaced former Rule 26. This Rule refers to disturbances and unlawful conduct on a licensed premise. The new Rule makes some changes in the wording of the Rule but the result makes no material difference.

New Rule 28 replaced former Rule 29. The old Rule specified that holders of special amusement permits who advertised admission charges must clearly indicate that such admission charge is for a designated area. This Rule also provided that no premises holding a Class A license could charge admission. This last clause pertaining to Class A licensees was omitted from the new Rule.

Former Rule 37 which stated, "all advertising matter must be specifically authorized by the commission," was deleted.

New Rule 54 replaced Rule 56. The change in this Rule permits Class A. restaurant licensees to maintain a separate room as a cocktail lounge whereas they were prohibited under the old Rule. The new Rule also recognizes as bona fide any Class A restaurant serving two meals per day rather than three meals per day under the old Rule.

New Rule 55 modifies former Rule 57 and authorized permits to be granted for singing as well as dinner music and social dancing in Class A restaurants but added that no premises holding

a Class A restaurant license may charge admission.

New Rule 56 replaced former Rule 58. The change in this Rule spells out the fact that no liquor business may be conducted on Sunday. It reiterates that it shall be unlawful for any licensee to deliver any liquor during days and hours forbidden in Title 28, section 4. However, the words "order taking" were deleted from the new Rule.

New Rule 62 replaced former Rule 64 which prohibited retail store licensees from selling or furnishing liquor knowing that it is to be consumed on the premises appurtenant thereto. The new Rule excepts living quarters appurtenant thereto.

New Rule 63 modifies former Rule 65 by permitting persons sixteen years of age to handle malt liquor instead of persons eighteen years of age as stated in the old Rule. This does not pertain to places where malt liquor is consumed on the premises. The age of the handler in this instance must still be twenty-one.

Former Rule 69 has been eliminated. This Rule pertained to the employment of minors in taverns and is fully covered by the new Rule 17.

Former Rule 70 also has been eliminated. This Rule specified the size of the container of malt liquor that could be before any one person at any one time and is adequately covered by new Rule 16.

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Throughout the many subcommittee hearings, Committee members were frequently asked questions relative to changes in

the existing laws relating to liquor and liquor licenses. All such questions and suggestions were carefully recorded and later, upon review, given every consideration for inclusion in Committee sponsored legislation. Following is the result of such action, including the Committee's findings, recommendations and implementing legislation: (Appendix B)

1. Finding. The hearings brought to the attention of the Committee that the Maine Revised Statutes made provision forbidding children under the age of sixteen to be admitted or allowed to remain in any disorderly house, house of ill fame, gambling place or place where intoxicating liquors are sold. While it is admitted that no historical research has been done to ascertain when this law came into existence it would appear from its wording that it preceded the prohibition era. While the bulk of this section is as valid today as it was when enacted, that portion pertaining to intoxicating liquor is not only ancient but is potentially dangerous. Fortunately this law today is not enforced as it refers to intoxicating liquor. If fully enforced a practical application would be that few retail grocers within our State could sell malt beverages for they would be in continual violation. A child of sixteen years of age or less could not enter a supermarket or any retail store where malt beverages were sold without laying the manager or proprietor open to the penalties set forth. It seems to the Committee that any law or portion of it which is purposely not enforced for reasons of obsolescence should be deleted from the statutes.

Recommendation:

That Title 17, section 851 be amended by deleting from this

section all references to intoxicating liquor as the liquor laws themselves are quite capable of handling all situations concerning minors and intoxicating liquors.

2. Finding. Present day modes of transportation differ considerably from those of the past and the airplane now plays a prominent place in the transportation system of this nation. Most airlines, it would seem, serve not only meals but also cocktails while in flight. It was brought before the Committee that no provision existed in the Maine liquor laws relative to the licensing of airlines. It was suggested that this rapidly growing form of transportation may be increasing its flights into this State and no doubt will serve food and beverages while in flight over this State and should be properly licensed.

The Committee is in agreement with the testimony offered and suggests that provision be made for licensing.

Recommendation:

That all scheduled airlines serving the State of Maine be charged a license fee of \$500 per year for spirituous and vinous and a license fee of \$200 for malt liquors, subject to the provisions of federal and state laws and under such rules and regulations as the commission may prescribe. It is recommended that Title 28, §§2, 701, 801, 802 and 804 be amended to cover such legislation and a new section 753-A be added to Title 28.

3. Finding. It was proposed that Title 28, section 2, subsection 8, defining dining cars, be eliminated.

Since dining cars no longer operate on trains in the State of Maine it does not appear feasible to maintain this law.

Recommendation:

That Title 28, section 2, subsection 8 be repealed.

4. Finding. That Title 28, section 2, subsection 9 be amended to state a gross amount of business in either food or lodging to be eligible for a hotel license. It is felt that some hotel licensees may be simply degenerating into drinking places and not offering to the general public either food or lodging as is the basic intent of the law.

The Committee felt that this suggestion has considerable merit. In order to obtain and hold a hotel license, such licensee should be a hotel in fact as well as in name.

Recommendation:

That Title 28, section 2, subsection 9 be amended to require that the dollar volume of all hotels should be at least 10% receipts from meals and lodgings as a requirement for eligibility for a hotel license.

5. Finding. Under existing law the operator of a Class A restaurant must wait a period of three months before obtaining a license. It would appear that this waiting period has prevented some substantial investments in restaurant properties in this State particularly in the tourist field.

The Committee found that this waiting period has had a bad effect on proposed investments. The laws as they are now written serve no useful purpose. The discretionary powers now vested in the commission are sufficient to handle any given situation.

Recommendation:

That Title 28, section 2, subsection 18 be amended to eliminate the three months waiting period incumbent on the operator of a Class A restaurant before being able to obtain a license.

6. Finding. By statute the sale of liquor in municipalities is precluded from sale until after the polls close on the day of a general election or state-wide primary. The Committee felt this provision of the law in the same category as number 12 and required similar treatment.

Recommendation:

That Title 28, section 4 be amended by striking out the 3rd sentence of said section which reads as follows:

~~"Liquor may be sold in any municipality on the day of holding a general election or state-wide primary only after the closing of the polls in such municipality."~~

7. Finding. At various hearings discussions centered on doorways and entrances to living quarters which were adjacent to or over the licensed premises which were conducted as restaurants; it appeared that in some instances real hardships were being created in forcing owners to build outside stairways, etc., so that entrance to their living quarters could be maintained.

It was concluded by the Committee that this law did indeed create a hardship especially in light of the fact that Class A restaurants were exempt from this provision if the commission saw fit to grant them the right to maintain such entrances. It would appear to be only just that all restaurants be granted the



same privilege if in the opinion of the commission such request was justified.

Recommendation:

That Title 28, section 8 be amended by striking out the words "Class A."

8. Finding. In an age of imaginative architecture, merchandizing centers are frequently constructed so as to combine retail functions under common roofs and on a variety of levels. Under existing statutory provisions a license for the sale of malt liquor may be denied if merchandizing in such building is to be done on more than one floor. The Committee indicated that the single level requirement was a needless and unnecessary restriction.

Recommendation:

That Title 28, section 9 be amended by striking the words: "~~and-all-merchandizing-in-the-building-is-done-on-a-single-floor.~~"

9. Finding. Testimony was offered at several of the hearings relative to the confusion caused in new stores licensed for off-premises sale of malt liquors. In Title 28, section 55, subsection 7, the commission has the right to grant to prospective licensees, who have been granted a license to become effective at a future date, the privilege of ordering liquor with which to stock their place of business. However, this is simply the right to order. The wholesaler may not make delivery until the effective date of the license. It would seem that making a delivery on the opening day and arrangement of the merchandise makes

for a very difficult situation and one that could be easily remedied by permitting the new licensee to take delivery in advance of the opening day. Of course, the merchandise so delivered could not be sold or offered for sale until the effective date of the license.

The Committee felt that this subsection should permit delivery prior to the effective date of the license as it would appear that the denial of this serves no useful purpose.

Recommendation:

That Title 28, section 55, subsection 7 be amended to permit prospective licensees who have been granted a license to receive delivery of such liquor, on approval of the commission, not more than five days in advance of the effective date of the license.

10. Finding. At a meeting with the State Liquor Commission an apparent inconsistency in the law was brought out relative to the distribution of its pamphlet of regulations which it is required to publish at least annually on or before August 31st. As the Legislature is now operating with seemingly ever increasing length of sessions and such laws as it passes are not effective until ninety days after adjournment, the August 31st requirement is somewhat absurd.

The Committee agreed that in the light of the foregoing, the law should be amended to permit publishing at a later date, particularly in legislative years.

Recommendation:

That Title 28, section 55, subsection 12 be amended to read, "on or before August 31st or 90 days after becoming law."

11. Finding. At this same meeting with the commission, it was pointed out that under present law the commission is required to hold meetings four times a year at various locations within the State for the purpose of outlining its operations, receiving suggestions and disseminating information to the public. The commission suggested that this subsection be repealed as it served no reasonable or useful purpose.

The Committee found that even though these meetings were required by law, they have not always been held. However, when held, they have been sparsely attended, if attended at all. The Committee felt that this requirement served no useful purpose and is needless expense since the public has access to all information pertinent to the operation of the commission through normal channels.

Recommendation:

That Title 28, section 55, subsection 19, requiring the commission to hold four public meetings a year be repealed.

12. Finding. Under the law as it presently exists the state liquor stores are required to close on the day of the holding of a general election or state-wide primary election. It would appear from all testimony offered that this is a truly archaic law, its purpose truly lost in the annals of time. Apparently its only accomplishment is a loss of revenue to the State and a holiday for the liquor store employees.

The Committee concludes that the closing of the state liquor stores on the day of a general election or state-wide primary election is without reasonable purpose.

Recommendation:

That Title 28, section 154 be amended by striking out the words "or on the day of the holding of a general election or state-wide primary."

13. Finding. Considerable discussion revolved around the question of eliminating the discount granted to licensees purchasing spirituous and vinous liquor from the commission. Under the present law the licensees make such purchases from the commission at a discount of 10%. This 10% discount is perhaps in theory rather than practice, as certain other charges are added and it would be more realistic to say that the actual discount received was nearer 7 1/2% than 10%.

Testimony was offered to the effect that the elimination of this discount to the licensees would result in additional revenue of several hundred thousands of dollars to the State. Opponents felt that the elimination of the discount would amount to the impost of additional taxation on hotels, clubs and Class A restaurants which are presently licensed to sell spirituous and vinous liquor and that such an impost was not warranted at this time.

While the Committee agrees that the elimination of the discount to licensees would yield additional funds it also agrees with the opponents that its elimination would result in higher prices. It was also felt that if such a bill was to be introduced it should come from sources other than this Committee.

Recommendation: - None

14. Finding. During the course of the Committee hearings the opportunity presented itself to explore the functions and duties of the Administrative Hearing Commissioner. While this commissioner is in no way part of the State Liquor Commission he plays a very vital part in the enforcement of its rules and the laws governing the same.

Discussions relative to this office revealed that most infractions of the laws and rules governing the sale of liquor are ultimately referred to the Administrative Hearing Commissioner for disposition. It further appeared that this office operates efficiently and satisfactorily. However, a unique, if not ambiguous law presented itself in Title 28, section 402. Under this section any appeal from the findings of the Administrative Hearing Commissioner relative to the suspension or revocation of a license issued by the commission must be made back to the commission. Here we find the awkward situation of the commission for all purposes preferring certain charges against a licensee and after the Administrative Hearing Commissioner finds the licensee guilty of the charges and prescribes a penalty the licensee must appeal to the very party that made the charges.

The Committee felt that this situation should not exist under the law.

Recommendation:

That the last paragraph of Title 28, section 402, be repealed.

15. Finding. At each hearing in the several cities throughout the State the subcommittee was constantly confronted by storeowners who requested that the age of persons receiving payment for malt liquor at check-out counters in retail stores be reduced. The present law states that any person receiving payment for malt liquor must be at least eighteen years of age. Testimony was offered to the effect that at times it was difficult to obtain check-out help that was eighteen years or more of age. Persons sixteen years of age are quite capable of doing this type of work but the owners were unable to offer them even temporary employment because of this law. It was suggested that the age requirement be reduced to sixteen. It was also suggested that there was no more contamination present in ringing up the sale of a six-pack of beer than there was in ringing up the cost of a carton of cigarettes.

The Committee concluded that the law governing the age of employees receiving payment for malt liquor at check-out counters in retail stores should be reduced to sixteen years of age. It was felt that the fact that a person of sixteen years of age ringing up the sale of malt liquor will in no way affect the morals of that person and the absurdity of a person under eighteen years working at check-out counters having to call the manager or other person twenty-one years of age or over to ring up a sale should be dispensed with.

Recommendation:

That Title 28, section 751-A be amended by substituting the figure "16" for the figure "18" in the 3rd line of that section.

16. Finding. Considerable discussion arose during and in the course of the several hearings in reference to granting legal permission to waiters and waitresses who were over the age of eighteen to serve liquor to patrons of Class A restaurants, clubs and hotel dining rooms. The hotel, club and restaurant business feels that it has been severely handicapped by its inability to obtain sufficient numbers of waiters and waitresses of legal age which is now twenty-one.

Many instances were disclosed depicting the existing shortage particularly during the summer months at the height of the tourist season.

As the law now reads Class A restaurants, clubs and hotels may employ persons under the age of twenty-one to wait on table. They may take orders for intoxicating beverages but may not serve them. In instances such as this the underage waiter or waitress endeavors to find another person who is twenty-one or over to serve the customer while the underage person usually accompanies such person to direct him to the table to be served.

To the operators of Class A restaurants, clubs and hotels located in resort areas the seasonal situation is acute and instances were related where they were forced to close for want of help.

The Committee found that an acute and serious situation does exist. There appears to be no valid reason for insisting that persons under twenty-one cannot serve liquor to patrons particularly when they are, as a practical matter, present while being served.

Recommendation:

That Title 28, section 852 be amended to permit the employment

of persons over the age of eighteen years in Class A restaurants, clubs and hotel dining rooms only.

17. Finding. It is well known that any resident or non-resident of this State may make application to the State Liquor Commission for an adult identification card provided that they are between twenty-one and twenty-five years of age. However, the Committee has been informed that there have been numerous instances of persons over the age of twenty-five years refused when they have attempted to purchase liquor. The seller has every right to refuse a sale when he feels that the age of the would-be purchaser is questionable or in doubt and this apparently has caused considerable consternation among those who have every right to purchase but are refused because of the age question.

There have been numerous cases which have fallen into this category and it appears feasible that some provision be made to alleviate these circumstances.

Recommendation:

That Title 28, section 1060 be amended to provide persons over the age of twenty-five with State Liquor Commission identification cards upon payment of \$1.

18. Finding. The law now provides that all seized or forfeited liquor, excluding malt liquors, be turned over to the commission for distribution to hospitals and state institutions on request. Use of such liquor is restricted to medicinal purposes only. If the court or judge determines that such liquors are unfit for human consumption or unsatisfactory in



any manner, the court or judge may order them destroyed. If they are held or undistributed for a period of six months they are to be destroyed. The opinion was offered that most of the liquors seized and forfeited are of such condition and quality that they could readily be sold and such moneys as could be realized should accrue to the State.

The Committee felt that this suggestion was sound and feasible. When a sufficient quantity of forfeited liquors accumulated the State Liquor Commission should have the authority to dispose of the same by auction to licensees only.

Recommendation:

That Title 28, section 1211 be amended to permit the State Liquor Commission to auction off forfeited liquors to licensees only.

## APPENDIX A

February 29, 1968

Honorable William Dennett  
 Kittery  
 Maine

Dear Mr. Dennett: Re: Liquor Commission - Administrative Code

## FACTS:

You have asked this office for opinions re the following two matters.

## QUESTION #1:

Do the procedures for the adoption, filing and taking effect of rules and regulations of 'agency' under the Administrative Code apply to the Liquor Commission?

ANSWER: Yes.

## OPINION #1:

There can be no doubt that the State Liquor Commission is an 'agency' subject to provisions of Chapters 301 through 307 of Title 5. 5 M.R.S.A. §2301, subsection 1, lists those agencies subject to the Administrative Code. The section reads in pertinent part:

"§2301. Definitions

For the purpose of chapters 301 to 307:

"1. Agency. 'Agency' means the following State boards, commissions, departments or officers authorized by law to make rules or to adjudicate contested cases:

. . . .

"State Liquor Commission

. . . . "

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The addition of the State Liquor Commission to the State agencies subject to the Administrative Code occurred in 1963 (Public Laws 1963, Chapter 412, section 1).

5 M.R.S.A. sections 2351 and 2352 sets forth the procedure for the adoption, and the filing of rules and regulations under the Administrative Code with the Secretary of State, and the effective date of the rules and regulations thus filed. The sections read as follows:

"§2351. Adoption

In addition to other rule-making requirements imposed by law:

"1. Adopt rules. Each agency may adopt, amend and repeal rules of practice before it, together with forms and instructions.

"2. Descriptive statements. To assist interested persons dealing with it, each agency shall so far as practicable supplement its rules with descriptive statements of its procedures.

"3. Notice of action. Prior to the adoption, amendment, or repeal of any rule, the agency shall, so far as practicable, publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit suggestions orally or in writing.

"4. Form and legality. Prior to the adoption, amendment or repeal of any rule authorized by law, the agency shall submit the proposal to the Attorney General for approval as to form and legality."

"§2352. Filing and taking effect

"Each agency shall file forthwith with the Secretary of State a certified copy of each rule hereafter adopted by it and each rule in effect on September 16, 1961. The Secretary of State shall keep a permanent register of such rules open to public inspection.

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"1. Approval. The adoption, amendment or repeal of a rule by an agency shall not hereafter become effective until approved as to form and legality by the Attorney General. Approval shall be presumed if the Attorney General takes no action within a period of 30 days after the proposal is submitted.

"2. Effective date. Except as set forth in subsection 1, the adoption, amendment or repeal of a rule by an agency shall become effective upon filing with the Secretary of State, unless a later date is required by statute or specified in the rule."

While it is true that 5 M.R.S.A. §2302 states that, "In any conflict between chapters 301 to 307 and Title 28, the provisions of Title 28 shall prevail." -- an adoption, filing, and making effective rules and regulations pursuant to 5 M.R.S.A. §§2351 and 2352 of the Administrative Code would not conflict with any provision of liquor laws under Title 28.

We have examined Title 28 with particular reference to 28 M.R.S.A. §55, subsection 1, provides, inter alia, that the Commission shall, ". . . make such rules and regulations as they deem necessary for such purpose and to make rules and regulations for the administration, clarification, carrying out, enforcing and preventing violation of all laws pertaining to liquor which rules and regulations shall have the force and effect of law, unless and until set aside by some court of competent jurisdiction or revoked by the commission."

28 M.R.S.A. §55, subsection 8, gives the Commission power "To adopt rules, requirements and regulations, not inconsistent with this Title or other laws of the State, the observance of which shall be conditions precedent to the granting of any license to sell liquor, including malt liquor."

28 M.R.S.A. §55, subsection 12, requires the Commission, "To publish at least annually on or before August 31st in a convenient pamphlet form all regulations then in force and to furnish copies of such pamphlets to every licensee authorized by law to sell liquor."

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The aforementioned three subsections of section 55 are the subsections dealing with rules and regulations. These three subsections do not conflict with 5 M.R.S.A. §2351 or §2352, as these three subsections do not in any way establish the manner in which the rules shall be adopted and how and when the rules shall become effective.

It is our conclusion, on the basis of the examination of Title 28, that no procedures have been established by that Title for the promulgation of rules and regulations and, therefore, the procedures set forth in 5 M.R.S.A. §§2351 and 2352 of the Administrative Code are the procedures to be followed by the Liquor Commission for the promulgation of rules and regulations.

In view of the foregoing the rules and regulations filed with the Secretary of State on April 6, 1966 are the effective rules and regulations adopted by the Liquor Commission and all subsequent amendments and additions to, or repeal of, those rules and regulations are not legally effective at this time.

QUESTION #2:

Does the Liquor Commission have direct authority over the Enforcement Division of the Liquor Commission?

ANSWER: Yes.

OPINION #2:

Although it is true that 28 M.R.S.A. §55, subsection 14 states in part, ". . . . The inspectors shall be under the direct supervision and control of the chief inspector . . . ." our Legislature did not have to state the obvious fact that the chief inspector shall be under the direct supervision and control of the Liquor Commission. The Liquor Commission appoints the chief inspector and could for cause, under the Personnel Law, discharge the chief inspector. The Liquor Commission, through its direct control of the chief inspector has direct authority over the Enforcement Division. The Liquor Commission is charged with the general supervision and administration of all liquor laws and the Enforcement Division, which is a subordinate branch of the Liquor Commission, assists the Liquor Commission in the manner and to the

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extent required by the Commission, but in no event exceeding the authority granted the division by 28 M.R.S.A. §55, subsection 14.

Very truly yours,

James S. Erwin  
Attorney General

JSE:H

cc: Keith H. Ingraham

## APPENDIX B

## AN ACT to Revise the Liquor Laws.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 17, §851, amended. Section 851 of Title 17 of the Revised Statutes is amended to read as follows:  
§851. Permitting children in disorderly house

Whoever admits or allows to remain in any disorderly house, house of ill fame, gambling place ~~or place where intoxicating liquors are sold~~, or other place injurious to health or morals, owned, kept, maintained, managed or controlled by him in whole or in part, any child under the age of 16 years, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days. ~~A child or children under the age of 16 years may enter places where intoxicating liquor is sold when accompanied by a parent, guardian or other adult person in charge of such child or children, with the consent of the parent or guardian of such child or children.~~

Sec. 2. R. S., T. 28, §2, sub-§1-A, additional. Section 2 of Title 28 of the Revised Statutes, as amended, is further amended by adding a new subsection 1-A, to read as follows:

1-A. Airline. "Airline" shall mean any person operating regularly scheduled intrastate or interstate passenger air transportation.

Sec. 3. R. S., T. 28, §2, sub-§8, repealed. Subsection 8 of section 2 of Title 28 of the Revised Statutes is repealed, as follows:

8.--Dining-cars.--"Dining-cars"-and-"cars-supplying-food"

~~shall-mean-and-include-cars-in-which-food-is-prepared-and-served  
and-also-other-cars,-for-accommodations-in-which-an-extra-charge  
is-made,-in-which-food-is-served-from-a-dining-car-or-from-a-car  
supplying-food-in-the-same-train.~~

Sec. 4. R. S., T. 28, §2, sub-§9, amended. Subsection 9 of section 2 of Title 28 of the Revised Statutes, as amended by sections 1 and 2 of chapter 404 of the public laws of 1965, is further amended by inserting after the first sentence, a new sentence, as follows:

At least 10% of the total volume of business of such hotel shall be from meals and lodgings.

Sec. 5. R. S., T. 28, §2, sub-§18, amended. The 5th sentence of subsection 18 of section 2 of Title 28 of the Revised Statutes is amended to read as follows:

The commission, in the case of an applicant for an initial "Class A restaurant" license, is authorized to and shall exercise its judgment as to the applicant's probable qualification with the income provisions of this subsection during the applicant's initial license period where the applicant is the owner or operator of a year-round or part-time restaurant which operated in the calendar year prior to making application and substantially met the income requirements of this subsection ~~and-where-the-applicant-is-a-new restaurant-established,-either-year-round-or-part-time,-which-operated as-such-for-a-minimum-of-3-months-prior-to-making-application.~~



Sec. 6. R. S., T. 28, §4, amended. The 3rd sentence of section 4 of Title 28 of the Revised Statutes is repealed, as follows:

~~Liquor may be sold in any municipality on the day of holding a general election or state-wide primary only after the closing of the polls in such municipality.~~

Sec. 7. R. S., T. 28, §8, amended. Section 8 of Title 28 of the Revised Statutes, as enacted by section 51 of chapter 513 of the public laws of 1965, is amended to read as follows:

§8. Entrances from restaurants to living quarters

The commission (Liquor) may grant written permission to a licensed person, who operates a Class-A restaurant to maintain an entrance, doorway or other aperture leading directly from the licensed premises to his living quarters, provided that said entrance to living quarters shall be so constructed that it shall not be necessary to go through the area where liquor is served in order to enter said living quarters.

Sec. 8. R. S., T. 28, §9, amended. The first sentence of section 9 of Title 28 of the Revised Statutes, as enacted by section 53 of chapter 513 of the public laws of 1965, is amended to read as follows:

Notwithstanding any other statute or rule or regulation of the commission to the contrary, no person, firm or corporation shall be denied a license for the retail sale of malt liquor solely because the retail store premises of the applicant has entrances, doorways or other apertures which are not securely and permanently

sealed leading from the retail store premises of the applicant to other premises where other types of business are carried on, provided that the retail store premises of the applicant and the nonlicensed portions of the other premises are under a common roof ~~and all merchandising in the building is done on a single floor~~ having common entranceways into which all persons enter for both the proposed licensed premises and any unlicensed premises.

Sec. 9. R. S., T. 28, §55, sub-§7, amended. Subsection 7 of section 55 of Title 28 of the Revised Statutes, as amended by chapter 187 of the public laws of 1965, is further amended to read as follows:

7. Licensing. To issue and renew all licenses provided for by this Title and to hold hearings thereon. Prospective licensees who have been granted a license, effective at a future date, may, on approval of the commission, order liquor in advance of the effective date of the license, and may receive delivery of such liquor, on approval of the commission, not more than 5 days in advance of such effective date, and may advertise such effective date.

Sec. 10. R. S., T. 28, §55, sub-§12, amended. Subsection 12 of section 55 of Title 28 of the Revised Statutes is amended to read as follows:

12. Pamphlet of regulations. To publish at least annually on or before August 31st or 90 days after becoming law in a convenient pamphlet form all regulations then in force and to furnish copies of such pamphlets to every licensee authorized by law to sell liquor.

Sec. 11. R. S., T. 28, §55, sub-§19, repealed. Subsection 19 of section 55 of Title 28 of the Revised Statutes is repealed, as follows:

~~19.--Public-meetings.--The-commission-shall-hold-public-meetings 4-times-a-year-at-various-locations-within-the-State-for-the-purpose of-outlining-operations-under-the-liquor-laws,--receiving-suggestions thereto-and-disseminating-information-to-the-public.~~

Sec. 12. R. S., T. 28, §154, amended. Section 154 of Title 28 of the Revised Statutes is amended to read as follows:

§154. Business hours

State stores shall not be open on Sundays, court holidays, ~~or~~ ~~on-the-day-of-the-holding-of-a-general-election-or-state-wide~~ ~~primary~~ or between the hours of 8 p. m. and 9 a. m., except during the time when eastern daylight time is in effect, state liquor stores may be opened at 8 a. m., standard time, and except on Saturdays when, if open, they may be kept open until 10 p. m., and the commission is authorized to regulate the opening and closing hours of each store within the provisions of this Title.

Sec. 13. R. S., T. 28, §402, repealed. Section 402 of Title 28 of the Revised Statutes, as amended by section 1 of chapter 99 of the public laws of 1965, is repealed.

Sec. 14. R. S., T. 28, §701, amended. The 2nd paragraph of section 701 of Title 28 of the Revised Statutes, as amended by section 54 of chapter 513 of the public laws of 1965, is further amended by inserting after the 8th line the following:

Public service - Airlines - Spirituous and vinous.....500.00

Public service - Airlines - Malt liquor.....200.00

Sec. 15. R. S., T. 28, §701, amended. The 6th paragraph of section 701 of Title 28 of the Revised Statutes is amended to read as follows:

One public service license shall be sufficient to cover all steamboats and, cars and aircraft operated by any one owner, except that a separate license fee shall be paid for each aircraft to be operated under a license.

Sec. 16. R. S., T. 28, §751-A, amended. Section 751-A of Title 28 of the Revised Statutes, as enacted by chapter 91 of the public laws of 1967, is amended to read as follows:

§751-A. Payment for sales in retail stores

For the purpose of receiving payment at the check-out counters for the sale of malt liquor in retail stores, the age of such employee receiving the payment shall not be under ~~18~~ 16 years of age, provided that an employee who is 21 years of age or older is present in the retail store in a supervisory capacity.

Sec. 17. R. S., T. 28, §753-A, additional. Title 28 of the Revised Statutes is amended by adding a new section 753-A, to read as follows:

§753-A. Public service - airlines

Licenses for the sale of malt liquor by airlines, in their aircraft, under such regulations as the commission may prescribe, may be issued by the commission upon written application in such form as they may prescribe, and upon payment of the fee of \$200 per year for each aircraft.

Sec. 18. R. S., T. 28, §801, amended. Section 801 of Title 28 of the Revised Statutes, as amended by section 3 of chapter 144 of the public laws of 1965, is further amended to read as follows:

§801. Licenses generally

Licenses for the sale of spirituous and vinous liquor and malt liquor to be consumed on the premises where sold may be issued to clubs and to bona fide hotels, restaurants, vessels and ~~railroad dining-cars~~ airlines on payment of the fees provided; subject to the condition that the application therefor be approved by the municipal officers of the town or city in which such intended licensee, if operating a club, restaurant or hotel, is operating the same, and if said hotel, restaurant or club is located in an unorganized place said application shall be approved by the county commissioners of the county, within which such unorganized place is located, and subject to the further condition that licenses issued to restaurants, except class A restaurants, shall be limited to malt liquor or wine. No licensee for the sale of liquor to be consumed on the premises where sold shall by himself, clerk, servant or agent, sell, give, furnish or deliver any liquor to be consumed elsewhere than upon the licensed premises, except, subject to the provisions of law and the rules and regulations of the commission, hotel licensees may sell liquor in the original packages to bona fide registered room guests. A separate license fee shall be paid for each aircraft to be operated under a license.

Sec. 19. R. S., T. 28, §802, amended. Section 802 of Title 28 of the Revised Statutes, as amended by section 4 of chapter 144 of the public laws of 1965, is further amended to read as follows:  
§802. Licenses for vessel corporations and airlines; restrictions

~~A public service spirituous and vinous liquor and malt liquor license granted to any railroad corporation operating dining cars within the State shall authorize the holder thereof to sell spirituous and vinous liquors and malt liquor in such cars only after leaving and before reaching the terminal stops, to be consumed in such cars.--Such licenses shall be good throughout the State.~~

Such license A public service spirituous and vinous liquor and malt liquor license granted to any vessel corporation operating boats within the State shall authorize the holder thereof to sell spirituous and vinous liquors and malt liquor in such boats on which food is served only after leaving and before reaching ports within the State.

A public service spirituous and vinous liquor and malt liquor license granted to any airline operating aircraft within the State shall authorize the holder thereof to sell spirituous and vinous liquors and malt liquors in such aircraft on which food is served to be consumed in the aircraft only after leaving and before reaching airports within the State.

Such licenses shall be under such rules and regulations as the commission may prescribe.

Sec. 20. R. S., T. 28, §804, amended. Section 804 of Title 28 of the Revised Statutes, as amended by section 5 of chapter 144 of the public laws of 1965, is further amended to read as follows:

§804. Public service corporations

A public service spirituous and vinous liquor and malt liquor license shall not be issued to any ~~railroad-er~~ vessel company or airline until the applicant therefor has filed with the commission a surety bond similar in form and amount to that required to be filed by a hotel or club licensee, except that in the case of a ~~railroad-company-er~~ vessel company or airline, one bond shall cover every ~~dining-car-er~~ vessel or aircraft of such company.

Sec. 21. R. S., T. 28, §852, amended. Section 852 of Title 28 of the Revised Statutes is amended to read as follows:

§852. Employment of minors

No licensee for the sale of liquor to be consumed on licensed premises, except in Class A restaurants, clubs and hotel dining rooms, shall employ any person under the age of 21 years in the direct handling or selling of liquor on the premises where such liquor is sold. No licensee for the sale of liquor to be consumed on the licensed premises of Class A restaurants, clubs and hotel dining rooms shall employ any person under the age of 19 years in the direct handling or selling of liquor on the premises where such liquor is sold.

Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment for not less than 30 days nor more than 6 months, or by both.

Sec. 22. R. S., T. 28, §1060, amended. The 2nd paragraph of section 1060 of Title 28 of the Revised Statutes, as enacted by chapter 413 of the public laws of 1965, is amended to read as follows:

There shall be no fee for the issuance of such an adult identification card. Any resident of the State or nonresident in the State over the age of 25 years may be issued such an identification card on payment of a fee of \$1.

Sec. 23. R. S., T. 28, §1211, amended. The first sentence of section 1211 of Title 28 of the Revised Statutes is amended to read as follows:

All liquors declared forfeited by any court or judge under this Title shall, by order of the court or judge rendering final judgment thereon, be turned over to the commission for distribution upon request to hospitals and state institutions for medicinal purposes only or the commission may auction off such forfeited liquors to licensees.