

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

July 18, 1938

Hon. Frank P. Washburn
Commissioner of Agriculture
Augusta, Maine

Dear Mr. Washburn:

Under date of July 15 you request that I let or you shall allow a stipend to the Fair Association which allow the sale of S.B. beer on their premises. In the latter part of Section 15 of Chapter 88 of the Revised Statutes the provision is as follows:

"Each society receiving aid from the state under this section shall cause the prohibitory liquor law to be enforced on all grounds over which they have control and not allow immoral shows, gambling, or any form of games of chance on said grounds. Neglect or failure on the part of any society to observe any of the foregoing requirements shall be deemed sufficient cause for withholding such society's share of the stipend, and the commissioner is required and directed to authorize payment of stipend only to such societies as have observed all of the said requirements.

Section 15 of said Chapter 88 provides that,--

"No payment of any state aid, whether made under the provisions of section twenty-five or by special appropriation, shall be made to any society until the treasurer thereof files with the treasurer of state a certificate on oath, stating the amount raised by it and containing the specifications required in section twenty-nine; and also a certificate from the commissioner of agriculture that he has examined into the claim of said society; that in his opinion it has complied with the provisions of sections twenty-nine and thirty-two and with section twenty-seven; that there has been cleared and paid by said society as premiums and gratuities a sum at least equal to the amount apportioned to said society, and that the provisions in regard to immoral shows, gambling, and the sale of intoxicating liquors have been strictly complied with."

Comm'r of Agriculture, July 18, 1907, Page 2.

The law under which beer containing more than one-half of one percent of alcohol by volume is not sold in the state, is found in Chapter 168 of the Public Laws of 1888. The definition is contained in Section 3 of said chapter, which reads as follows:

"For the purposes of this act, the words 'malt beverage' or 'malt beverage' shall be interpreted to mean all non-intoxicating beverages containing malt and containing more than one-half of one percent of alcohol by volume."

Sub-section 1 of Section 3 of said Chapter 168, provides as follows:

"The state licensing board shall have the power and duty to adopt rules and regulations for the administration of this act and for the supervision and regulation of the manufacture, sale and transportation of malt beverages throughout the state; the manufacture, sale and transportation of which is hereby permitted and authorized."

It is apparent from the above that the legislature of the State of Maine have authorized the manufacture, sale and transportation of non-intoxicating liquor only and has made no attempt to define the alcoholic content. Therefore it becomes a question of fact as to whether or not B.S. beer is intoxicating. Our courts have never passed upon the question except to state it is a question of fact.

From a practical standpoint the law enforcement officers of Maine have made no attempt, up to the present time, to determine whether or not B.S. beer is intoxicating, but have apparently proceeded on the assumption that it is not. You, of course, may raise the issue by withholding the state stipend although even your so doing might not elicit an opinion from our Court. The problem is peculiarly yours, but if you will permit me to say so, it would seem as though you could be justified in assuming that the beer which is now sold all over the State of Maine is non-intoxicating until the enforcement officials had raised the point and obtained a decision to the contrary.

Very respectfully yours,

Attorney General

CIC H