

MAINE STATE LEGISLATURE

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April 24, 1940

Hon. George H. Hinckley
% Hinckley & Hinckley
119 Exchange Street
Portland, Maine

Dear Brother Hinckley:

Following receipt of your letter of April 4th, in regard to the malt liquor license to Henry A. Alix, which I acknowledged on April 5th, I waited for the Liquor Commission to take this matter up with me. They said nothing to me about it and so, on receipt of your letter of April 18th, I got in touch with William Gallagher, Esquire, who does the legal work for the Commission, and asked that both applications made by Mr. Alix be sent to my office for examination. While the commission has not yet formally asked me for an opinion in connection with this matter, Mr. Gallagher and I have discussed the situation at length and have examined the applications.

The Liquor Commission receives every year, approximately eighteen hundred applications for this type of license, and in previous discussions with Mr. Gallagher we had come to the conclusion that the Commission could not take the time or justify the expense to examine into all of the proceedings before the municipal officers in order to determine whether they had strictly conformed to the duties imposed upon them. Section 10 of Chapter 268 of the Laws of 1933, provides that no licenses for the sale of malt liquors to be consumed on the premises, shall be issued until the application is approved by the municipal officers, and in that Section nothing is set forth as to the duties of municipal officers, which are provided for in Section 25 of Chapter 237 of the Public Laws of 1937. If the Commission adopted a rule that before acting upon an application which bore the approval of the municipal officers, it was its duty to make sure that all of the acts by such municipal officers leading up to their approval were strictly in accordance with the law, it would seem to put them to the examination of all of the events connected with this, and they might have to make sure even that the notices for hearing were properly published, a duty which would not seem to be imposed upon them by any provision of the Statutes. It may be that the

Hon. George H. Hinckley
April 24, 1940
Page 2.

Statute should be amended to place such obligation on the Commission, but it would seem to me that in the absence of such express responsibility, that the Commission is justified in accepting the certificate of the municipal officers in assuming that they have strictly complied with the statutory duties imposed upon them as such officers.

The duties of the Commission, with respect to the suspension or revocation of licenses, are set forth in Section 15, Chapter 237 of the Laws of 1937, and I am troubled somewhat by the rights of the Commission to hold a hearing and revoke the license issued to Mr. Alix for any reason that is not specifically set out in that Section. For instance, if there is any evidence that the applicant made any inaccurate statement in his application, I should not hesitate to advise them that they should revoke his license as they have a right to do at their discretion; and in the absence of such basis for a revocation, it would seem to me that your remedy would be a proceeding against the municipal officers for their apparent failure to comply with the terms of the statute, with regard to the notice of hearing.

Very truly yours,

Frank U. Burkett
Attorney General

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