

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

May 22, 1942

Robert B. Williamson, Chief Attorney
Office of Price Administration
Augusta, Maine

Dear Sir:

The Public Laws of 1941 of the State of Maine, Chapter 295, Section 1, reads as follows:

"All spirits and wines as defined in section 4 of chapter 300 of the public laws of 1933 shall hereafter be sold by the state at a price to be determined by the liquor commission which will produce a state liquor tax of not less than 61% based on the less carload cost f. o. b., Augusta, Maine, excepting only that spirits and wines sold at wholesale under the provisions of section 5 of chapter 301 of the public laws of 1933, as amended, may be sold at wholesale prices established pursuant to the provisions thereof. Any increased federal taxes levied on or after April 1, 1941 shall be added to the established price without mark-up. All net revenue derived from such tax shall be deposited to the credit of the general funds of the state."

You will note that there is no discretion in the State of Maine Liquor Commission to produce an amount less than 61% in excess of the cost to the Commission of that liquor, f. o. b., Augusta, less carload lots (less carload lots means highest price in broken lots).

It is my understanding that there has been an increase in freight rates allowed as of March 18th which was quoted to us on April 1st or after, and so does not appear in our March price lists and certainly is not reflected in any March sales.

I understand there are also other charges, some of which may be for increased freight which appear in the basic cost of the liquor to the distillers, wholesalers or rectifiers when the liquor is in the warehouses in New York or from whatever State it is shipped to us. Such added costs appear reflected in the price that is charged to this State.

There are also other increased costs to the distiller and to other persons handling the liquor before it is shipped to us that can be reflected in the charge against us due to the fact that, as a monopoly State, we have customarily been able to purchase liquor at a lower price than can individual distributors. It is my understanding that under the order, the distiller is permitted to charge us the highest price that he has received for similar goods sold to any person during the month of March. This makes it possible for him to charge us a price considerably in excess of the price we have been paying (there is a possible defense we would have for ourselves which we feel is improper to use and of which we do not wish to avail ourselves).

In view of the fact that the Legislature of Maine has put on the Liquor Commission the burden of producing an amount that is 61% in excess of the cost to the State of the liquor f. o. b., Augusta, are we justified in refusing to pay the distiller a price which would include increased freight rates and increased other costs to him when the result will be that we shall either have to increase our liquor prices correspondingly or act in violation of the plainly expressed law laid down by our Legislature?

You understand, of course, that it is the desire of the State of Maine to cooperate with the Federal government in this matter insofar as we can do so. We insist, however, that our cooperation is voluntary. We insist that the Federal government has not the right to require that the State shall set any particular price on its own goods which it is selling, and in cooperating in this regard we are not in any way waiving any rights that the State may have to refuse to cooperate. Any waiver of rights of the State of Maine in this particular instance is not to be considered as a precedent as a waiver on any other occasion or in any other regard.

Very truly yours,

FRANK I. COWAN
Attorney General

From:
Frank I. Cowan, Attorney General

May 22, 1942

To:
Harold I. Goss, Deputy Secretary of State

In re Calvin Lane

I have your request for an opinion based on the following set of facts:

A candidate from the City of Portland files a nomination paper in which it is clearly set forth that the electoral district from which he is seeking election is the City of Portland.

This nomination paper is one of several which he files.

If we count all the names on the nomination papers he will have ample names to justify placing his name on the ballot.

We find, however, the following facts: (1) Several signatures are followed in the column marked "residence" by the word "Gorham" or "Westbrook" or "Cape Elizabeth", etc. None of these names are struck off of the nomination papers. (2) Some of the signatures are followed in the column marked "residence" by such designations as "11 Smith Street".

The questions you ask are: (1) Shall the Secretary of State count as names properly on the nomination paper, persons who gave their places of residence as towns or cities known to be different from the town or city which is the electoral district in which the