

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

June 25, 1942

To: State Liquor Commission

From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General*Subject: Sale of Liquor to Minors*

There has been no judicial interpretation to date of Sec. 12-C of Chapter 250 of the Laws of 1941 which is the law relative to the sale of liquor, etc. to minors.

Under the law as it is now enacted it is illegal for any licensee to sell, furnish, give, serve or permit to be served any liquors, malt liquors, wine or spirits to any minor under the age of 18 years. The law makes an exception, however, in the case of a licensee for the sale of malt liquor to be consumed on the premises, by the provision that such licensee shall not furnish and sell malt liquor to persons under the age of 21 years.

It is my opinion that under this law it is necessary to prove both the furnishing and sale to obtain a conviction.

I might add that this is an inquiry from an individual outside of the department. It should not be the custom for this department to render opinions or interpretations of the law on moot questions not officially before the Commission for determination for persons outside of the department.

July 8, 1942

To: Fred M. Berry, Administrative Dept. State Liquor Commission
AssistantFrom: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

In reply to your memorandum of July 8, with reference to the question of whether or not a law enforcement agency of the State of Maine must necessarily pay the town clerk for the providing of a certificate of birth, I am of the opinion that the answer to your inquiry is "Yes."

Under Chapter 193, Laws of 1941, the town clerk is entitled to a fee of 50c for issuing a certificate of birth. No exception is made in reference to the receiver of such certificate.

July 8, 1942

To: Frank I. Cowan, Attorney-General

From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Upon receipt of your memorandum dated July 2, 1942, in reference to the 61% markup on liquors, I conferred with the Commission and with Fred M. Berry, Administrative Assistant to the Commission.

I have been informed that the 61% markup has been carried out fully with one exception. Subsequent to receiving your memorandum of May 28, all vendors transacting business with the Commission were notified of the insistence on the 61% markup and advised that it would not be possible to continue their merchandise at a higher price than the price prevailing during the month of March, 1942, which substanti-

ated the retail selling price per bottle during that month. In every case but one the vendors have cooperated fully by notifying the Commission that they would revert to the prevailing prices of March so that the Commission would be able to obtain their 61%. On June 16, the retail prices in all liquor stores were adjusted so that they did not exceed the price higher than the same merchandise sold for during March. These prices conformed to O. P. A. regulations as well as the State Law.

In this adjustment there was one brand of merchandise on which the selling price was lowered and on which the vendor had not guaranteed the prevailing cost price during March. This matter was corrected July 1, and the prices at the liquor stores adjusted so that the State would receive the 61% markup. This company has advised the Commission that they are now able to sell this brand of merchandise at the lower price due to a change in formula, and upon receiving this merchandise the retail price will be maintained at the higher level until the State has been compensated for the loss on the bottles sold between June 16 and June 30. In the final analysis, the net loss will be nil and the Commission over a period of time will have obtained the 61% in the aggregate on the merchandise handled.

I have impressed upon the Commission and Mr. Berry the importance of complying strictly with the Statute in every detail in the administration of the law.

July 14, 1942

To: Wilbur H. Towle, Chairman Dept. State Liquor Commission

From: William H. Niehoff, Asst. Dept. State Liquor Commission

Attorney-General

Subject: Payment of Excise Taxes

This is with reference to your memorandum of July 8, 1942, concerning the letter from Jacob Agger, Esq. addressed to Mr. Berry, Administrative Assistant to the Commission.

It apparently appears that the wholesale beer distributors are seeking some system whereby the difficulties attending the advance payment of excise taxes is to be overcome. It has been suggested that a bond may be given to secure the payment of the excise taxes, and also that they be paid in a lump sum in advance of sending the orders.

Section 20 of Chapter 268, Public Laws of 1933, as amended by Chapter 236, Section 1, Public Laws of 1937, in reference to the method of purchasing malt liquors, among other things, provides: "Three copies of the order are to be mailed to the Commission *with a check* for the amount of the excise taxes required to cover the amount of the order." (underscoring mine.)

The foregoing statute is mandatory. It expressly provides the method of procedure in both ordering the malt liquor and the payment of the excise taxes. This statute must be adhered to strictly. It provides the only method of payment of the excise taxes. Any other system that would not be in strict compliance with this law would be illegal.