

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

I appreciate the necessity for a change caused by present market conditions, but request for such a change in the law should be addressed to the Legislature and not the Liquor Commission. The former has the power to amend or repeal, but not so the latter. The Commission can only administer the law as it has been enacted by the Legislature.

July 14, 1942

To: W. H. Towle, Chairman Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Credits for the sale of malt liquor to post exchanges

The question has arisen as to whether or not a wholesaler may legally extend credit for the sale of malt liquors to so-called "post exchanges."

Chapter 250, Sec. 12-C, Public Laws of 1941, among other things, provides: "No licensee shall sell, or offer to sell, any malt liquors, wine or spirits, except for cash, excepting credits extended by a hotel or club to bona fide registered guests or members."

The prohibition of the extension of credit for the sale of malt liquors is directed to the licensee. If he extends credit for such sale, he clearly violates the law.

August 25, 1942

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

Subject: Sale of malt liquor on Naval Reservations by civilians

Request has come to us from A. G. Hillberg, Lieutenant Commander, United States Navy Reservation at Portland, Maine, for information in regard to what steps should be taken to enable commissary contractors to sell beer in the construction camps. Particular request has been directed in reference to the construction camp on Long Island, Casco Bay, Maine.

Our laws provide that no malt liquor intended for sale shall be manufactured in this State or sold at wholesale or at retail within the State without a license therefor issued by the State Liquor Commission.

These laws would not apply to territory ceded by the State of Maine to the United States government in accordance with the acts of Congress and the Laws of Maine. Such property would be federal property over which the State would have no jurisdiction. If the Navy or any part of the Navy, being an instrumentality of the federal government, wants to sell malt liquor on any of its territory they could do so without a license from the State Liquor Commission. However, as I understand the circumstance of this particular request, Lieutenant Commander Hillberg wants to give authority to some civilian to sell beer on the Naval territory to civilian workmen. It is my opinion that he is without such authority. Under Naval Regulation General Order No. 59, the sale of alcoholic beverages is expressly limited to officers' quarters, officers' messes, and officers' clubs. Exceptions to this rule can be

made only on specific authority of the Secretary of the Navy. In C. M. O. No. 9—1936 (page 11), it was held that "as a matter of policy, it was decided by the Secretary of the Navy that sale of beer to employees by the Navy yard restaurant, or elsewhere within the yard limits, will not be permitted."

I have been informed by John Quincy Adams, Major, United States Marine Corps, District Legal Officer for the First Naval District, that the sale of alcoholic beverages by the Navy to civilians is expressly prohibited. The Navy as such can sell and dispense malt beverages to its personnel on Long Island without having to have a license from the Commission. It cannot, however, extend or grant this right to any civilian to sell malt liquor on the Naval territory.

November 3, 1942

To: Capt. W. H. Towle, Chairman Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Cash Sales to Army Post Exchanges

This is in reply to your request for an opinion with reference to the interpretation of the word "cash" as set forth in Section 12-C of Chapter 250 of the Public Laws of 1941.

The Army Exchange Service (an instrumentality of the federal government) is purchasing certain malt beverages from wholesalers in this state. Because of the system of financing these Post Exchanges by the Army, it is not practical for them to pay the distributor in cash money at the time of delivery. This, I understand, gave rise to your inquiry for interpretation of the word "cash" as used in the act.

Ordinarily, the word "cash" means money, but it is frequently used as a term meaning the opposite of credit. *Hartung v. Rusking* 182 P. 177.

The word "cash" means money or its equivalent—*Kiles v. Young* 125 S. E. 204.

"Cash" includes currency, orders, warrants or scrip. Words and Phrases 4th series.

In view of the interpretation placed on the word "cash" by courts as cited above, we may safely assume that unconditional checks or orders for the payment of money constitute "cash" and would be in compliance with the statutory requirement of cash for the sale of malt liquor, wine or spirits.

In coöperation with Col. Waterman of the U. S. Army, we have drafted a form of order for the payment of malt beverages to the distributor by the Army. In my opinion this order properly executed would constitute "cash" in the transaction between the Post Exchange and the distributor for the sale of malt beverages. Copies of this form are hereto attached and made a part of this memorandum.