

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

November 6, 1942

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

*Subject: Wholesale Licenses in Dry Towns*

This is in reply to your request for an opinion as to whether or not a wholesaler's license can be issued to a wholesaler whose place of business is in a so-called "dry" town or city.

Section 8 of Chapter 268 of the Public Laws of 1933 as amended provide for licenses for the sale and distribution of malt liquors at wholesale. No reference is made in this Act to the provisions of the so-called Local Option Law.

Section 17 of Chapter 177 of the Public Laws of 1939 as amended provides for local option with respect to (1) State Stores; (2) the sale of wine and spirits to be consumed on the premises; (3) the sale of malt liquors to be consumed on the premises; (4) the sale of malt liquors not to be consumed on the premises. A majority negative vote prohibits the issuance of any of these licenses in that particular city or town for a period of two calendar years.

Rule 15 of the Commission provides: "No wholesale licensee shall sell malt liquors to any person, firm or corporation who is not the holder of a license."

I am of the opinion that our laws permit the issuance of a wholesaler's license even though the place of business of the wholesaler may be located in the so-called "dry" town or city. In other words, the result of local option election in no way affects the right to issue a wholesaler's license.

November 17, 1942

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

*Subject: Transfer of Malt Liquor Licenses*

This is with reference to your inquiry regarding the transfer of a Retail Malt Liquor License and a Restaurant Malt Liquor License. Section 13 of Chapter 237 of the Public Laws of 1937 provides for the transfer of certain licenses from one place to another within the same municipality. This section provides as follows: "The Liquor Commission, upon application in writing, may transfer any liquor license of any hotel or club or the Vinous liquor license of any restaurant from one place to another within the same municipality \*\*\*." The law, however, does not include retail malt licenses nor restaurant malt licenses.

The Liquor Commission derives its authority from the Legislature. The Legislature has not seen fit to legislate for the transfer of retail malt licenses or restaurant malt licenses. In other words, the Legislature has made provisions only for the transfer of any liquor license of a hotel or club or the Vinous liquor license of a restaurant.

It is my opinion that the Commission is without authority to transfer retail malt licenses or restaurant malt licenses from one place to another.

December 11, 1942

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

*Subject: Contract with the American Bank Note Company*

You ask whether or not the Commission has a legal right to contract for the supply of Decalcomania stamps to various distilleries. I understand the practice in the past has been as follows:

The Commission has contracted with the American Bank Note Company for the printing of these stamps. The Commission has required the various distillers to purchase these stamps direct from the American Bank Note Company at an agreed price. The distillers have been instructed to affix these stamps to the liquor purchased by the Commission. It appears that the price the distillers pay for the stamps is in excess of the cost of the stamps and this difference is paid to the Commission by the American Bank Note Company.

Section 22 of Chapter 237 of the Public Laws of 1937 repealed Section I of Chapter 179 of the Public Laws of 1935 and provided: "The State Liquor Commission shall have general supervision of manufacturing, importing, storing, transporting and selling liquor \*\*\* . The Commission shall have power to import spirits and wines and shall have exclusive control of the sale of all liquors. \*\* " Section I of Chapter 223 of the Public Laws of 1937 provides: "No person, association, partnership or body-corporate, other than the State Liquor Commission shall import spirituous and vinous liquors into this State. \*\* " Section 3 of the same act provides: "No person, association, partnership or body-corporate, shall knowingly transport to, or cause to be delivered to, any person, firm or corporation, other than the State Liquor Commission, unless upon written permission of said Commission, any spirituous and vinous liquors except liquors purchased from a State store or the State Liquor Commission. \*\* "

Section 5 of Chapter 268 of the Public Laws of 1933 among other things provides that the State Liquor Commission 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 liquors throughout the State; the manufacture, sale and transportation of which is hereby permitted and authorized." Section 2 of Chapter 301 of the Public Laws of 1934 extends this power and duty to the sale of liquor as well as malt liquor. Section I and Section 2 of Chapter 179 of the Public Laws of 1935 as amended by Chapter 237 of the Public Laws of 1937 provide: "Section I. The State Liquor Commission shall have general supervision of manufacturing, importing, storing, transporting and selling liquor. \*\* " Section 2. "The Commission shall have the right to establish regulations for clarifying, carrying out, enforcing and preventing violation of all