

# STATE OF MAINE

# REPORT

### OF THE

# ATTORNEY GENERAL

for the calendar years

1943--1944

or any of the laws pertaining to liquor and such regulations shall have the force and effect of law. \*\* " Section 7 of Chapter 300 of the Public Laws of 1934 provides: "It shall be the duty of the Commission to buy and have in its possession wine and spirits for sale to the public. Such wine and spirits shall be purchased by the Commission directly and not through the State purchasing agent and shall be free from adulteration and misbranding. The Commission shall sell at retail in original packages and for cash, either over the counter or by shipment to points within the State stores to be operated under the direction of the Commission. The Commission shall establish prices for retail sale which shall be uniform throughout the State."

The above citations are to constitute the authority of the Commission to make such rules and regulations and formulate such policies for the purpose of carrying out the intent of the various acts. It is my opinion that under the broad terms of the above cited laws the Commission has legal authority to continue its policy of requiring all liquor coming into this State to bear a stamp. If some arrangement were not made in respect to identification of liquor purchased legally, it would be practically impossible to distinguish between liquor legally purchased and liquor illegally purchased. It is the duty of the Commission to enact such rules and policies as will hinder or prevent the flow of illegal liquors in the State and also to make more practical the enforcement of the laws in respect thereto.

The matter as to whether or not the Commission should make a profit on the sale of these stamps does not present a legal problem. That is a matter wholly within the discretion of the Commission.

February 8, 1943

To: The CommissionDept. State Liquor CommissionFrom: William H. Niehoff, Asst.Dept. State Liquor Commission

### Attorney-General

### Subject: The Granting of Retail Malt Liquor Licenses in Unorganized Places

You ask whether or not the Commission may issue a Retail Malt Liquor license in unorganized places, in view of the fact that persons living in an unorganized place do not vote under the so-called Local Option law.

Section 17 of Chapter 300 of the Laws passed at the special session of the Legislature in 1934 constitutes the so-called Local Option law. This law provides: "If a majority of the votes cast in a city or town in answer to question (4) are in the affirmative, the commission may issue licenses for the sale of malt liquor not to be consumed on the premises therein subject to all provisions of law." It also provides: "If a majority of the votes cast on question (4) are in the negative, licenses for the sale of malt liquor not to be consumed on the premises in that city or town shall not be issued, for the 2 calendar years next following." Chapter 220 of the Public Laws of 1941 among other things pertaining to the issuing of a Restaurant Malt Liquor license provides: " \*\*\* and if said hotel, restaurant or club is located in an unorganized place said application shall be approved by the county commissioners of the county, within which the same is located."

The law contemplates the issuance of a Malt Restaurant Liquor license in an unorganized place, yet makes no provision for the Local Option law to be effective in such unorganized place. Consequently I am of the opinion that the Commission is authorized to issue a Retail Malt license to a proper applicant in an unorganized place not withstanding the Local Option law.

March 11, 1943

To: Alonzo Conant, Director Dept. State Liquor Commission Enforcement Division

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

#### Subject: Transportation of Liquors into Dry Towns

Section 19 of Chapter 127 of the Revised Statutes of 1930 provides: "No person shall travel from town to town, or from place to place, in any city, town, or plantation, on foot or by public or private conveyance, either by land or water, carrying for sale or offering for sale intoxicating or fermented liquors, and no person shall solicit, obtain, or offer to obtain orders for the sale or delivery of any intoxicating or fermented liquors, in any quantity." Under this Section it would be unlawful for any one to either peddle or sell liquors or to solicit orders for liquor in any dry town.

Section 20 of Chapter 127 of the Revised Statutes of 1930 as amended provides: "No person shall knowingly transport from place to place in this State any intoxicating liquors, with the intent to sell the same in this State in violation of law, or with the intent that the same shall be so solicited by any person, or to aid any person in such sale, and no person shall transport any spirituous or vinous liquors in this State in a greater quantity than three quarts, unless said liquor was purchased from a state store or the state liquor commission. \*\* "

Section 3 of Chapter 223 of the Public Laws of 1937 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 or vinous liquors, *except liquors purchased from a state store or the state liquor commission.*"

Under these Sections there is no restriction on the transportation of liquors into a dry town so long as the liquors were purchased from a state store or the state liquor commission.

Section 17 of Chapter 300 of the Public Laws of 1933 (passed at the Special Session November, 1934) is the so-called "local option" law. This local option law applies only to the sale of liquors in the town. If a town votes dry, the law merely prohibits the sale therein of liquors.