

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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 licensé 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: Alounzo 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.

It does not prohibit the drinking of liquor in a dry town, nor the transportation of liquor into a dry town so long as the liquor had been purchased at a state store or from the state liquor commission.

From the detailed report you have submitted to me with reference to the situation in Houlton, I am unable to find any unlawful practice or the violation of any liquor law. Persons living in a dry town have the right under our law to purchase liquor at a state liquor store located in another town and to transport that liquor to their home in the dry town. This may be done either by the person himself or the transportation may be by an established common carrier.

March 11, 1943

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

Subject: Rebate of Taxes on Malt Liquors Sold to Army Exchanges

By opinion under date of April 18, 1941, the Attorney-General's Department ruled that the Commission was authorized to grant rebate of the tax imposed under Section 2 of Chapter 15 of the Private and Special Laws of 1937, as amended by Section 37 of Chapter 236 of the Public Laws of 1937 (being called an emergency deficiency tax) when the malt liquor was sold to Post Exchanges of the United States Army but not to rebate the tax imposed by Section 21-A of Chapter 268 of the Public Laws of 1933 which was enacted by Section 2 of Chapter 236 of the Public Laws of 1937 (being called the importation tax).

The War Department has protested the payment of this so-called importation tax and contends that the Army Exchanges are exempt from payment thereof. The question submitted to me is whether or not the Commission is authorized to rebate this tax to a wholesaler who sells to an Army Exchange.

The sale of intoxicating liquors by Army Exchanges is prohibited by Federal Statute and Army Regulations (Sec. 38, Act February 2, 1901, 31 Stat. 758; 10 U. S. C. 1350; Par. 9 b (7), AR210-65, Tentative, July 1, 1941). Beer with an alcoholic content of not more than 3.2 per centum by weight is non-intoxicating under Federal law. (48 Stat. 25).

The Army Exchange is a Government instrumentality deemed essential for the performance of governmental functions. It is an integral part of the Federal Military Establishment and, insofar as state laws are concerned, occupies the same general legal status, and is entitled to the same immunities as other governmental agencies of the United States. (*Standard Oil Company of California v. Johnson*, 62 S. Ct. 1168). In view of the ruling of the United States Supreme Court in *Standard Oil Company of California v. Johnson* (supra) I am of the opinion that the Army Exchange is exempt from the payment of the importation tax as well as the emergency deficiency tax and that the law authorizes you to rebate these taxes on sales to an Army Exchange. I am informed by the War Department that the authorized Army Exchanges in Maine are as follows:

Fort Williams, Cape Cottage
Dow Field, Bangor