

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

