

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

I am sorry that this matter cannot be worked out as you request and hope that you will be able to make the necessary arrangements that will enable you to get your supply of beer on Saturday.

July 26, 1943

Hillard H. Buzzell
County Attorney
Belfast, Maine

Dear Hillard:

This will acknowledge receipt of your letter of July 19. I was out of the office for several days and this accounts for the delay in my reply. You propound four questions for consideration and I shall attempt to dispose of them in that order.

Question 1. Whether or not the operator of a cocktail lounge must serve any person who sees fit to enter his portals providing they are not under the influence of liquor and are not creating a disturbance of any kind at the time? A licensee is responsible under the law to the State Liquor Commission and I can find no law which compels the licensee to serve any person. The licensee being responsible for what may occur on the licensed premises, I think has the authority to determine to whom he will serve intoxicating drinks.

Question 2. Has the operator the right to refuse any such person and after requesting them to leave the premises and they refuse, to call a police officer for the purpose of evicting such a person and just what is the legal status of the police officer under those conditions? The first part of this question is answered in the answer to the first question. I know of no authority that a police officer has of evicting anyone from the premises unless he is doing so in making an arrest. Under the law, the owner may use as much force as is reasonably necessary to evict a trespasser from his premises.

Question 3. Has the operator a right to refuse to sell liquor to any person who has formerly created a disturbance or under the influence of liquor? It is my opinion that the operator has a perfect right to refuse to sell to anyone any liquor and needs no reason for refusing to do so. It might be quite apparent that on a previous occasion he had had trouble on account of a particular person drinking, and does not want to have a reoccurrence of that situation.

Question 4. Has the operator a right to discriminate and serve those he desires to serve and refuse those he does not desire to serve with the exception of discrimination relative to the color in the Armed Forces? Chapter 129—Section 21 of the Revised Statutes prohibits discrimination by an inn-keeper against any soldier or sailor enlisted in the service of the United States except for good cause. This, I take it, refers only to the business in connection with the operator of the hotel. It is not necessary to have a cocktail lounge in order to operate a hotel. If the discrimination against the man in service is for cause, the licensee has the right to discriminate against him.

We must differentiate between the duties and liability of an inn-keeper and those of an operator of a cocktail lounge which happens to

be located in the hotel. In *Healey vs. Gray* 68 Me. 489, the court held that an inn-keeper had no liability unless the relationship of host and guest existed. *Atwater vs. Sawyer* 76 Me. 539 defines and explains the duties of inn-keepers toward guests. This explanation is further given in 115 Me. 190 in *Norcross vs. Norcross* 53 Me. 163. The court held that the length of stay of a party in a hotel was no criterion to determine the relationship.

It all sums up to this: that the serving of liquors is not a part of the responsibility the Statute imposes on an inn-keeper. If the holder of a liquor license has cause or is fearful of possible consequences, he may rightfully refuse to serve any particular person intoxicating liquors.

WILLIAM H. NIEHOFF

Asst. Attorney-General

August 24, 1943

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

Subject: Proposed Agreements Submitted for Opinion

I have examined the proposed "Sales and Bottling Agreement" with Foster and Co. as well as the proposed "Deposit Agreement" with Foster and Co., the American Distilling Company and the First National Bank of Chicago. The proposed agreements are hereto attached.

Both of these agreements are unilateral and afford no security to the State. The proposed agreement calls for the expenditure of a large sum of money purely on a contingency for delivery of liquors over a period of 14 months. The State would have to pay 14 months in advance of delivery a portion of the purchase price with no secured guarantee of delivery. In addition to the usual risks attending such an agreement, there is added the uncertainty of conditions attending the war. All such contemplated contingencies and conditions are reasonably guarded against in the agreement for the protection of all parties except the State.

Under Section 7 of Chapter 300 of the Public Laws passed at the Special Session of the Legislature in November 1934, the Commission was given authority to "buy and have in its possession wine and spirits for sale to the public." It would be lawful for the Commission to enter into a reasonable contract for the purchase and delivery of liquors directly and not through the State purchasing agent. However, the authority and duty imposed goes only to the purchase of liquors and nothing else. The proposed contracts provide not for the purchase of liquor directly but in part for bottling and for the payment of obligations due a bank by a liquor establishment.

In addition to the proposed contracts being unilateral in scope and objectionable as to conditions, I am of the opinion that the Commission does not have legal authority under the law to enter into either of the proposed contracts. Not being specifically authorized by law, such