

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

contracts would have to be referred to the Department of Finance under the administrative code enacted in Chapter 216 of the Public Laws of 1931.

January 14, 1944

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

Subject: Acceptance of Assignments

STATEMENT OF FACTS

Brookside Dist. Products Corporation assigned to Fidelity-Philadelphia Trust Company their accounts receivable from the State of Maine. The assignee now requests the State of Maine to accept this assignment and make its payments to them in accordance with said assignment. The question presented is whether or not an official of the State can accept this assignment.

OPINION

Assignment of debt or accounts receivable from one to another, with evidence by which they are ascertained, are valid and create a new contract between the assignee and the debtor. *Harrison v. Hill* 14 Me. 129. Likewise future fruits of existing contracts are assignable. *Farnsworth v. Jackson* 32 Me. 419; *Knevals v. Blauvelt* 82 Me. 458; *Wade v. Bessey* 76 Me. 413. When an assignment has been made and proper notice thereof given to the debtor he must treat with the assignor at his own peril. *Palmer v. Palmer* 112 Me. 152. The assignment operates as a new contract between the debtor and the assignee, commencing on notice, by which former becomes debtor of latter for amount equitably due. *Joy v. Foss* 8 Me. 456.

In the event an assignment is made and proper notice thereof is given to the State of Maine, the department owing the amount should withhold payment until approval for payment to the assignee is secured from the Attorney-General's Department.

No officer of the State can create a contractual liability on behalf of the State by accepting an assignment unless expressly authorized by Statute. I find no Statute authorizing anyone to accept assignment of accounts payable on behalf of the State.

Therefore the Fidelity-Philadelphia Trust Company should be notified that the State cannot accept the assignment of the Brookside Dist. Products Corporation.

June 14, 1944

Ernst, Gale, Bernays, Falk and Eisner
40 Wall Street
New York 5, New York

Re Liquor Dividends

Gentlemen:

Your letter of June 1st addressed to the Maine State Liquor Commission has been referred to me for reply.

Please be advised that under the provisions of the laws of Maine, no person, association, partnership or body corporate, other than the