

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

August 28, 1944

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

Subject: Authority to Prohibit Sales of Liquor

Inquiry is made as to the legal authority of the State Liquor Commission to control or prohibit the sale of intoxicating liquors both at the State Stores as well as by licensees in the interest of the public safety and welfare during public celebration or demonstration resulting from the termination of the present war.

Section 5 of Chapter 268 of the Public Laws of 1933 authorizes the State Liquor Commission to "adopt rules and regulations for the administration of this act and for the supervision and regulation of the manufacture, sale and transportation of malt liquors throughout the state." Chapter 301 of the Public Laws enacted at the Special Session in November 1934, Section 2 provides that the State Liquor Commission "shall have all the regulatory powers in connection with licenses for the sale of liquor that are vested in said board, in connection with the sale of malt beverages." Chapter 96 of the Public Laws of 1939 grants to the commission general supervision of manufacturing, importing, storing, transporting and selling liquor. Section 19 of Chapter 237 Public Laws of 1937 grants to the commission "the right to establish regulations for clarifying, carrying out, enforcing and preventing violation of all or any of the laws pertaining to liquor and such regulations shall have the force and effect of law unless and until set aside by some court of competent jurisdiction or revoked by the commission." Section 22 of Chapter 237 Public Laws of 1937 grants to the commission "general supervision of manufacturing, importing, storing, transporting and selling liquor." Chapter 147 Public Laws of 1937 authorizes the commission "to regulate the opening and closing hours of each store (state liquor store) within the provisions of this act."

From the above citations it appears definitely that the commission is authorized to regulate the sale, transportation, etc. of all intoxicating liquor in this state. In order to prohibit the sale, transportation, etc. of liquor during a public demonstration for the purpose of "preventing violation of all or any of the laws pertaining to liquor" the commission should establish some definite rule to cover the situation. This rule should be made applicable to the various types of licensees. The state liquor stores could be closed on a directive order from the commission and no rule is necessary for this purpose.

October 26, 1944

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

Your memorandum of October 13, 1944, propounds the question concerning the statutory authority of the Maine State Liquor Commission to carry on public relations or educational activities such as the distribution of temperance leaflets, etc.

The powers, authority and duties of the State Liquor Commission are found in Sections 1 and 2 of Chapter 179 of the Public Laws of 1935 as amended by Chapter 237 of the Public Laws of 1937 and Chapter 96 of the Public Laws of 1939. This act as amended grants to the State Liquor Commission "general supervision of manufacturing, importing, storing, transporting and selling liquor, and shall have power to issue, renew, suspend and revoke all licenses and to hold hearings." This act further provides that the commission "shall have power to import spirits and wines and shall have exclusive control of all liquors." The act also provides that "the commission is authorized to promulgate rules, requirements and regulations, the observance of which shall be conditions precedent to the granting of any license to sell liquor, including malt liquor. These rules, requirements and regulations may include the character of the applicant, the location of the place of business, the manner in which it has been operated, and the determination by the commission whether or not to grant the license shall be final."

The act grants specific authority for the promulgation of regulations in the following language: "The commission shall have the right to establish regulations for clarifying, carrying out, enforcing and preventing violation of all or any of the laws pertaining to liquor and such regulations shall have the force and effect of law unless and until set aside by some court of competent jurisdiction or revoked by the commission. The commission shall have power by regulation to shorten the permissible hours of sale in state stores and to prevent the sale by licensees of wine and spirits to minors or persons under the influence of liquor, or to an interdicted person. The commission shall at least annually on or before June 30 of each year publish in a convenient pamphlet form all regulations then in force and shall furnish copies of such pamphlets to every licensee authorized by law to sell liquor."

From an examination of the above-cited laws, I am of the opinion that the Maine State Liquor Commission is not authorized by law to carry on any additional activities in respect to temperance. Commendable and apparently necessary as this idea may be, the Legislature has made no provision for such activity by the Liquor Commission. The Legislature has granted ample authority to the commission for the general management and control of the sale of all liquors but has not placed the responsibility for temperance on the commission.