

MAINE STATE LEGISLATURE

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74

March 18, 1947

To David H. Stevens, State Assessor, Bureau of Taxation

I received your memo of March 11th, stating that you had a hearing before the Claims Committee on a Resolve in favor of Joshua Treat of Winterport, Maine, in which he asked to be reimbursed for cigarettes which would have been seized, had not title been surrendered by William Ellingwood, Jr., who was in charge of the cigarettes which were held unstamped beyond the statutory period and were subject to confiscation by the agent of the Tax Assessor's office in accordance with Section 196 of Chapter 14, R. S. 1944,

". . . provided, however, that in lieu of forfeiture proceedings title to such seized, unstamped cigarettes may be transferred to the state of Maine by the owner thereof."

The question now arises whether or not Mr. Ellingwood was an agent of Mr. Treat at the time of the seizure and transfer of the legal title to the State of Maine. You will recall that at the time the transfer was made I gave you an oral opinion that in view of the fact that Mr. Ellingwood had possession of the cigarettes in the store, he was acting as an agent for Mr. Treat in the absence of the owner.

You state in your memo that Mr. Chase, your agent, at the time he visited the Treat store, inquired of two persons who were employed at the store as to who had authority to speak for Mr. Treat, and in both cases Mr. Chase was referred to Mr. William Ellingwood, Jr., and Mr. Ellingwood did not hesitate to sign the transfer of the cigarettes and he was acting in his capacity as manager of the store where the cigarettes were illegally held unstamped after the 72-hour statutory period had expired. You submit additional proof that on December 17, 1946, Ellingwood signed a United States Post-office return receipt for cigarette stamps shipped to the Treat Agency. That is an act of implied agency. You also have a copy of a Bangor and Aroostook Railroad delivery receipt which Mr. Ellingwood signed as consignee for Mr. Treat for a box of cigarettes consigned to Treat and Lowe Rexall Store, receipt dated November 23, 1946. You also have in your file of the Cigarette Tax Division a copy of a letter written to Mrs. William Kelly, Bangor, Maine, by Joshua Treat, in which he refers to Mr. Ellingwood as the bearer of the letter and instructs Mrs. Kelly to inform Mr. Ellingwood of any decision she may make, thereby proving that he was given authority to act in this particular instance.

Mr. Treat contended that Ellingwood was not authorized to transfer title to cigarettes, and therefore the transfer of title to the State of Maine was illegal and that Mr. Treat should be reimbursed by the State for the value of the cigarettes transferred by Mr. Ellingwood.

In this connection I wish to state and confirm my oral ruling shortly after the seizure, that Mr. Ellingwood in my opinion was acting as agent for Mr. Treat in the accepting of cigarettes, purchasing of stamps for same, hold possession of cigarettes for sale, and selling cigarettes under the authority given to him by Mr. Treat. This in my opinion is implied authority to act in emergency, with which he was confronted when your agent discovered illegally held cigarettes in Mr. Treat's store.

Mr. Ellingwood was presumed to have charge of said cigarettes and, rather than have the cigarettes seized and a warrant issued, libeling said cigarettes, Mr. Ellingwood willingly signed the transfer of title to the State of Maine.

It is my opinion that an agency may be created by virtue of necessity and that a relation of necessity exists under certain circumstances, such as the situation in question. For example, an agency may be implied by prior habits or from a course of dealings of a similar nature between the parties, especially where the agent has repeatedly been permitted to accept cigarettes and sign for them as consignee for the principal and perform similar acts relating to the sale and possession and stamping of cigarettes, which create the agency arising in emergency from a particular situation, making it necessary for the agent to act without receiving sanction or authority from the principal in the matter of the seizure of said illegal or unstamped cigarettes in the possession of Mr. Ellingwood as an agent of the principal, Mr. Treat.

It is my opinion that when Mr. Chase, your agent, came to the Treat drugstore and found unstamped cigarettes contrary to the statute, there arose at that time a new and unexpected emergency which justified Mr. Ellingwood in assuming extraordinary powers which were exercised in good faith and bound the principal, Mr. Treat. In other words, there was an implication of authority in the agent to act in this case, in order that the agency purpose for which the relation was created should be effectuated.

Accordingly, the rule advanced by the American Law Institute in this respect is that if, after the authorization is given (in this case, to sell cigarettes and receive them from the railroad company and buy stamps to place on them) an unforeseen situation arises for which the terms of the authorization make no provision and it is unpractical for the agent to communicate with the principal, he is authorized, in the absence of an agreement to the contrary, to do what he reasonably believes to be necessary in order to prevent substantial loss to his principal, which in this case was the seizure of the cigarettes through a libel proceeding under the statute and also to save his principal from the penalties for having unstamped cigarettes in his possession for a period exceeding 72 hours.

Ralph W. Farris
Attorney General