

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

in the Army for the next several years. In order to establish a domicile in Maine, he would have to be present here, as actual residence in a particular locality and intent to remain must concur.

I am sorry that I have to go at length into a question which a layman may consider simple, and not be able to answer it in a simple way; but this is because the facts given do not contain the elements necessary to give a direct answer. The best that I can do is to give you the rules by which one may abandon his former domicile and create a new one and again effect a change back to the old domicile.

ABRAHAM BREITBARD
Deputy Attorney General

March 2, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Liquor Licenses

This memo is relative to your recent inquiry as to the powers and duties of the Liquor Commission to revoke or suspend licenses for infractions of the liquor laws:

Section 60 of Chapter 57, as amended by P. L. 1947, Chapter 163 and P. L. 1947, Chapter 164, provides:

“The commission may revoke or suspend for a definite period licenses in accordance with the following provisions after notice and hearing. . .”

Subsection II of that section then enumerates the causes for which licenses may be revoked or suspended in the discretion of the Commission and which are as follows:

- “A. Violation of any law relating to alcoholic beverages or substantial infraction of any rule or regulation issued by the commission;
- “B. Knowingly making a false material statement of fact in the application for the license;
- “C. Knowingly making inaccurate and misleading statements as to brands or labels; giving of rebates to a customer for the purpose of influencing a sale;
- “D. Making sales to persons under age as prohibited by law;
- “E. Making sales after the permitted hours of sale;
- “F. Making sales on Sunday;
- “G. The making of sales by hotels, clubs and restaurants for off the premises consumption;
- “H. Making sales of spirituous or vinous liquor on the day of the holding of a general election or state-wide primary;
- “I. Conviction of violation of any law relating to sale of intoxicating liquor to minors.”

Subsection III provides for mandatory revocation in certain enumerated cases. This section begins with the following statement:

“It shall be the duty of the commission to revoke licenses for the following causes:

"A. Conviction of violation of any law of this state or of the United States relating to the manufacture, possession, transportation, or sale of intoxicating liquor, except sales to minors;

"B. Conviction of violation of any law of the United States relating to carrying on the business of a wholesale or retail dealer without a federal tax stamp;

"C. Conviction of the violation or the provisions of section 32 of the United States liquor taxing act of 1934 relating to having in possession distilled spirits in unstamped containers.

"D. Transferring, assigning, or hypothecating a license."

Prior to the amendment in 1947, revocation of licenses was mandatory in the causes marked E, F, G, and H, but that has been relaxed, and these causes were removed from the mandatory revocation provisions and incorporated in subsection II, which leaves it to the discretion of the Commission to suspend or revoke.

It would also seem to me that where the duty to revoke is mandatory, the Commission may not go behind the conviction. Upon proof of the conviction, they cannot inquire into the circumstances, but are bound by the record of the conviction. This would appear to be the intent of the legislature when it enumerated the causes for which the licenses may be suspended or revoked in the discretion of the Commission, and then enumerated the causes for which it said that it shall be the duty of the Commission to revoke.

ABRAHAM BREITBARD

Deputy Attorney General

P. S. There is a bill now in the legislature, L. D. 1042, which would amend the law by putting those causes under Subsection III into Subsection II, thus making all infractions subject to discretionary suspension or revocation.

Another bill, L. D. 1134, would provide an appeal to the courts in all cases. L. D. 1193 also deals with the right of appeal.

March 2, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Your Inquiry concerning Probation Officers

The statute, Chapter 136, Section 28, provides for the appointment of one probation officer in any county of the State where in the judgment of the Governor, by and with the consent of the Council, such appointment is desirable. Then in the same section provision is made as follows:

"If in any county it seems to the governor and council necessary to have more than 1 probation officer, the governor, with the consent of the council, may appoint one or more associates, who shall have all the authority under the direction of the probation officer which such probation officer has, and who shall receive for compensation and expenses such sum as the county commissioners of such counties shall deem just and proper."