

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

February 26, 1958

To: Chairman Liquor Commission

Re: Interpretation of the meaning of Sec. 13 with regard to limitation of purchases of wines and spirits by the State Liquor Commission.

We have your request for an opinion as to whether capital expenditures of the Liquor Commission are properly chargeable to the \$3,000,000 "working capital" set forth in Section 13 of Chapter 61, Revised Statutes of 1954, as amended.

It is our opinion that capital expenditures of the Commission should not be charged against the "working capital" set out in Section 13.

We can readily see that, when read by itself, without relation to other portions of the Act, or without scrutiny of the history of the law, the words "working capital" might be construed in a different light. However, reading all parts of the law together relating to the matter, as must be done when construing a statute, reveals that the use of the words "working capital" relates only to a limitation of inventory of wines and spirits.

When the sale of wines and spirits was first authorized in the State of Maine, an appropriation was provided out of the General Fund of the State in the amount of \$250,000 "for the purpose of providing operating capital under this Act." This provision went into effect November 10, 1934.

Under the terms of this provision there can be no question but that, initially, the only funds available to the newly created Liquor Commission for the purposes of Chapter 300, the "Act to regulate the sale of intoxicating liquors," was the \$250,000 from the General Fund of the State. This was intended to provide an initial fund for the purchase of wines and spirits, and the sale of the same through state stores as provided by the Act.

In the regular session of 1935, Chapter 24 the above-mentioned section was repealed and in place thereof there was a provision for "determination of profits and distribution," which provided that the net profits "shall be used in establishing a working capital for the purposes of carrying on the activities as provided in this Act," and further provided for the repayment of the original \$250,000 loan from general state funds at the rate of \$50,000 each year for 5 years. This Act became law March 7, 1935, and undoubtedly gave effect to the fact that a new element had entered the picture, namely net profits from the sale of spirituous and vinous liquor. However, the net profits under this Act were to be used for the purpose of carrying on all the activities of the Commission.

There was a further amendment in Public Laws of 1939, Chapter 302 which made no important changes in this provision.

The Public Laws of 1941 in Chapter 90 struck out of the existing Act the reference to creation of a working capital "for the purpose of carrying on the activities" of the Commission and substituted a provision which authorized the Commission to have on hand a stock of wines and spirits for sale, the value of which at the close of any fiscal quarter should not exceed the sum of \$700,000.

This provision clearly set a limit for the inventory of wines and spirits to be bought and on hand. At least by clear implication this section indicated that the gross profits of the Commission from sale of wine and spirits were to be a

fund from which the Commission should draw for its general operations, and for purchasing and maintaining a stock of wine and spirits. It could not possibly be presumed that this section intended to limit the general over-all expenditures of the Commission for all of its purposes to a total of \$700,000 per quarter. It was clearly a limitation on inventory rather than a fund for "carrying on the activities provided for by the liquor law" as enacted by Public Laws of 1935, Chapter 24 above cited.

The next change occurred in Public Laws of 1943, Chapter 126. This Act refers to "the working capital of the Liquor Commission" and provides that a maximum permanent working capital shall be established by appropriation by the legislature. It specifically authorizes the Commission to keep and have on hand a stock of wines and spirits which at no time could exceed the amount of working capital authorized. It cannot be conceived that this was intended to be all of the money available to the Liquor Commission but was rather an indefinite ceiling placed on the inventory of wines and spirits which the Liquor Commission might at any time maintain. In this Act as in subsequent Acts the provision was made that the net profits of the Commission should be "General Revenue of the State." It is presumed that all of the expenses of the Liquor Commission subject to supervision as provided in the Act would be deducted from the gross profits, and the net profit as so determined become part of the General Fund. As above stated it can only reasonably be interpreted that as to the inventory of wines and spirits the Commission was to be limited at all times by successive maximum figures established by the legislature.

Public Laws of 1945, Chapter 92, Sec. 1 followed closely the provisions of Chapter 126 of the Public Laws of 1943 by establishing a maximum inventory value of wines and spirits which could not exceed what the Act called the "working capital" established at \$3,000,000. This Act, like its predecessor, could not have meant that if at any time the Commission saw fit to stock merchandise in the amount of \$3,000,000 it would be without funds to operate and maintain stores, warehouses, salaries, wages, etc., incident to the operation of its business. There were minor changes made in 1953 having no bearing on the matter in issue.

The next major legislation enacted in connection with the issue was Chapter 401 of the Public Laws of 1955 when the Commission was placed under the line budget provisions but only in connection with the administrative expense. In fact this Act provided for specific amounts for the fiscal years 1955-1956 and 1956-1957 for "personal services, capital expenditures and all other." This Act in Sec. 1 also provided that expenses for the administration of the Commission should be paid for from such amounts as the legislature might allocate from the revenues derived from the operation of the Commission. It is to be noted that this was not as with all other departments of State, an allocation from the General Fund of the State, but out of the gross revenues of the Commission before a determination of the net revenues which were still payable to the General Fund of the State.

This Act also in Sec. 3 specifically sets out the "legislative intent and directs that the funds allocated in this Act" "shall apply to administrative expenses only of the Liquor Commission" and "is not intended to affect the use of the working capital" provided for by Sec. 13 of Chapter 61 of the Revised Statutes

or other activities required of the State Liquor Commission by Chapter 61 of the Revised Statutes.

An exactly similar Act was passed under Chapter 174 of the Private and Special Laws of 1957 containing allocations the same as in the Act of 1955, and also setting out the legislative intent clearly as the same is cited in relation to the 1955 Act.

It is impossible to conclude from all of the foregoing that the \$3,000,000 limitation on stock of merchandise as the same is set forth in Sec. 13 of the Revised Statutes of Maine 1954, as amended, can be anything other than a specified limitation of inventory. To charge against this limitation any items of expenditures by the Liquor Commission whether capital expenditures or other administrative expenditures so as to lower the total available inventory of wines and spirits seems entirely out of line with the intention of the legislature, and particularly with the legislative intent as it is specifically set forth in the Acts of 1955 and 1957 above cited.

FRANK F. HARDING
Attorney General

March 6, 1958

To: Julian W. Davis, Chairman of Harness Racing Commission

Re: Legislative power to grant special privileges to Gorham Raceway and Scarborough Downs

We have your memorandum of February 25, 1958, in which you ask the following questions:

Question No. 1

“Where did the legislature get power to grant special privileges to Gorham Raceway and Scarborough Downs for specific dates?”

Answer:

The tenor of this question is such that we believe you desire more than the academic answer: “The Legislature gets power to grant special privileges to Gorham Raceway and Scarborough Downs for specific dates from the Constitution.” Certainly your other questions, read in conjunction with this question, call for us to make the following observations.

Each public officer of this State, before entering upon the performance of his duties, takes an oath of office as set forth in our Constitution. One portion of the oath requires that the officer swear to faithfully discharge, to the best of his abilities, the duties incumbent on him as such officer “. . . according to the Constitution and laws of this State.”

Compliance with this oath requires an officer to administer the laws within his jurisdiction according to the word of the law. It is not his duty to question the wisdom of the Legislature in passing the law, nor to avoid the directions contained in the law. Each of such laws is to be considered as a valid law, and administered as such, until that law has been declared invalid by a Court of competent jurisdiction. Following the usual course of procedure, that Court would be the Supreme Court of the State of Maine.