

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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March 24, 1959

To: The Honorable Joseph T. Edgar
Speaker of the House
State House
Augusta, Maine

Dear Mr. Edgar:

This memo is in response to your oral request for an opinion as to whether the municipalities in this state under existing law have the authority to require that all businesses be subject to licenses issued by the municipality in which the business is located. Answer: No. Municipalities in this state do not have such authority.

38 Am. Jur., p. 12, Section 320. "Unless inhibited by a constitutional provision, the legislature has power to delegate to municipal corporations authority to levy and collect license taxes, either for revenue or regulation, and, for such purpose to classify various occupations and impose taxation of different amounts on the separate classes. The legislature may delegate licensing power to a municipal corporation to its full extent, so as to enable the corporation to license practically all callings to a limited extent, so as to enable the corporation to license dangerous callings; or it may withhold such power or delegate it only with limitations and restrictions."

38 Am. Jur., p. 19, Section 326. "If a charter or statute enumerates the occupations or businesses which may be regulated and licensed by a municipal corporation, the enumeration, if on the whole such appears to be the legislative intent, is exclusive, and the municipality has no power to license or regulate occupations or businesses not embraced in the enumeration."

The Legislature in this state appears to have handled licensing by the towns of Maine in a limited manner, particularly enumerating those businesses that may be licensed. See Chapter 90-A, Section 3, V, as an example where the power to regulate certain commercial activities is granted by the legislature, and where the power to regulate is accompanied by the power to require the persons running such business to obtain a license. The result of such enumeration is that a municipality may not require a license of a business not included among those enumerated.

In *State v. Brown*, 135 Maine 36, the rule is clearly stated at page 40: "The power of a municipal corporation to license an occupation or privilege or to impose a license tax thereon is not an inherent power, but to be exercised only when conferred by the state either in express terms or by necessary implication. The power to license and impose a license tax is generally implied from the power to regulate an occupation or privilege."

For the above reasons we are of the opinion that municipalities do not have the authority generally to license businesses or occupations, but are limited so that they may license only those businesses or occupations which the legislature has granted them power to license.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General