

MAINE STATE LEGISLATURE

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May 11, 1968

Trooper Alfred Eames
State Police Headquarters
Maysville, Maine

Dear Trooper Eames:

You have asked me what constitutes possession of intoxicating liquor in an auto as it relates to Section 51, Chapter 61, Revised Statutes of 1954. Much will depend on the fact situation as it develops from the evidence presented, and, therefore, no one answer can be given which will govern all fact situations.

Section 51, Chapter 61, provides in part:

"Any person under the age of 21 years, . . . who has any intoxicating liquor in his possession, . . . in any automobile, shall be guilty of a misdemeanor. . ."

The statute seems clear in its terms; it provides that a juvenile who has liquor in his possession in any public place or automobile is guilty of a misdemeanor. You must, in any event, furnish proof of possession.

Possession is defined as the detention and control, or the manual or legal custody of anything which may be the subject of property, for one's use and enjoyment. Possession of liquor which is not lawful is possession under some claim of right, control or dominion, with knowledge of same, Michigan v. State, 192 Wis. 414, 212 N. W. 564. Liquor brought on the premises without the owner's knowledge or consent is not lawful possession. Ownership is not necessary to constitute possession, Michigan v. State, 145 Mich. Crim. 606; 177 S. W. 2d 269.

Trooper Alfred Brown

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May 13, 1960

It may be said that one who has a vehicle under his control and liquor is found therein, there is an inference that the liquor was in his possession, but contrary or exculpatory evidence may develop which rebuts such inference. Barnhill v. State, 93 Fla. 1030; 111 So. 255.

In reference to your direct questions regarding whether or not all of the occupants can be charged, my only answer is that if the facts situation warrants it, they may be, if not, only those who are in possession. This boils down to the proof which you can present, I have checked the Maine cases on constructive possession and don't find any that are on point. Most of these cases deal with prohibition statutes.

I am afraid my answer is of little help to you in the problem presented. May I suggest that you explore the possibility of further legislation.

Very truly yours,

George A. Wathen
Assistant Attorney General

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