

MAINE STATE LEGISLATURE

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May 8, 1963

Honorable Robert A. Marden
President of the Senate
State House
Augusta, Maine

Dear Bob:

With respect to the proposed Sunday Closing Law, L.D. 1364 and its proposed committee amendment, you have asked the question:

"If a store, such as LaVerdiere's Drug Store, has less than 5,000 square feet . . . and less than five employees for the sale of general merchandise, is their status in any way affected by the fact that there are additional employees devoting their time to the dispensing of prescriptions, etc., in connection with the exempted status of the store on Sunday as a drug store? In other words, do the druggist and pharmacist dispensing medicine on Sunday count as employees for the purpose of determining the total number of employees of the store under the provisions of the MacGregor Bill?"

The question (s) call for several answers.

1. If any store has less than 5,000 square feet of floor space, according to the proposed bill and amendment, it is a store exempt from the provisions of the law requiring closure on the Lord's Day and certain holidays.

The specific words are: "This section shall not apply to: . . . ; stores which have no more than 5,000 square feet of interior floor space, excluding storage space and space for displays and exhibits."

2. It matters not how many persons are employed in the store if the floor space is less than 5,000 square feet, according to the amendment.

The converse also would apply.

If a store exceeded the limit of square footage under the bill but employed 5 persons or less, it also would be exempt.

"This section shall not apply to; . . . ; stores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular conduct of business;"

One to five persons could operate a store of any size on the Lord's Day, assuming this also was the usual complement in "the usual and regular conduct of business." We believe this to mean a regular business day.

3. In answer to - "do the druggist and pharmacist dispensing medicine on Sunday count as employees for the purposes of determining the total number of employees of the store"

Let's assume that our fictitious store had over 5,000 square feet and its exemption depended on the number of employees. The druggist and pharmacist should be counted as employees to determine its qualification.

The third paragraph of the bill reads in part: "For the purpose of determining qualification, a 'store' shall be deemed to be any operation conducted within one building advertising as, and representing itself to the public to be, one business enterprise regardless of internal departmentalization."

We are of the opinion that this paragraph relates to the "square footage" and "number of employees" qualifications, but this is not entirely clear. In other words, we don't believe the intention to be that the third paragraph apply to the words "drug stores" in the bill, without more. If this were so, then LaVerdiere's drug stores or any other large drug store could remain open on the Lord's Day simply by calling itself a drug store and despite the fact that it might employ 10 persons and be of 10,000 square feet of space.

To put it finally - a store such as LaVerdiere's can remain open on the Lord's Day if it -

- 1) employs 5 persons or less in the usual and regular conduct of its business, or
- 2) contains no more than 5,000 square feet of interior floor space with certain exclusions.

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If such a store exceeds both of these qualifications, then we believe that that part of it complying as a "drug store" within the limits defined by the court in State v. Fantastic Fair, et al., 158 Me. 258, could remain open.

We gather from your question you feel that a store to be exempt under the law must qualify as to both square footage and number of employees. We disagree and believe the two qualifications to be separable, as is obvious by our answer.

This could be a pretty good law with some clarification, and assuming it isn't ground to bits by amendments such as the committee amendment. It is at least clearer than the present statute and would be more easily enforceable.

Very truly yours,

Frank E. Hancock
Attorney General

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