

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Inc. and Katahdin Council, Inc., are entitled to the same treatment as the parent corporation.

Where a corporation claims immunity from the common burdens of taxation, which rest equally upon all, such corporation must bring itself clearly within the exemption; and the language relied upon as creating such exemption must be strictly construed.

RALPH W. FARRIS

Assistant Attorney General

January 29, 1964

To: Mrs. Alice B. Mann, Secretary, State Board of Barbers

Re: Lapsed Barber Licenses

Facts:

There are within the state some persons who have, in the past, been licensed as barbers. For one reason or another they have not annually renewed their license. In particular, some have not been licensed in the year 1963.

Question No. 1:

Does a person who has failed to renew his barber license in any year, including 1963, have to pass a regular examination in order to have a license?

Answer No. 1:

Yes.

Reason:

The 101st legislature enacted P. L. 1963, c. 102, which replaced the last paragraph of c. 25, § 230-K, to read:

"Any registered barber who fails in any year to renew certificate to practice barbering shall successfully pass a regular examination conducted by the Board of Barbers before a new certificate may be issued."

This new enactment became effective September 21, 1963. The licensing year is the calendar year, c. 25, § 230-K. Hence, any barber who had not renewed his license prior to December 31, 1963, must successfully pass a regular examination before being granted a license for 1964. The same would be true in any succeeding year.

Question No. 2 and 3:

If a barber has failed to renew his license in any year would he be eligible for a permit to practice barbering until the next examination?

If so, would he be required to work under the supervision of a master barber while using this permit?

Answer No. 2 and 3:

Yes.

Reason:

Revised Statutes, c. 25, § 230-J, in the second paragraph provides in part:

"If any applicant to practice barbering . . . qualifies for examination, the board may issue to such applicant, until the

results of the applicant's examination have been given, a permit to practice barbering under the supervision of a person registered to practice barbering ”

As stated in § 230-K, a barber who fails to renew his license in any year must take an examination. Hence, he is qualified for examination and, if he satisfies the residence requirement, he may be issued a permit which is good until the results of the examination have been given.

There is no expression such as “master barber” in the statute. Hence, it is assumed that it is meant to include a “person registered to practice barbering.” The formerly licensed barber who operates under the permit authorized by § 230-J must operate under the supervision of “a person registered to practice barbering.”

GEORGE C. WEST
Deputy Attorney General

February 4, 1964

To: Philip R. Gingrow, Director, Banks and Banking

Re: Validity of Retail Installment Contracts Subject to MVSF Act Entered Into by Unlicensed Retail Sellers

Facts:

During the examination of a trust company recently by our examiners it was observed that the institution had purchased retail installment contracts, the subject matter of which was motor vehicles, from an unlicensed retail seller.

Question:

Does the purchase of a motor vehicle retail installment contract by a sales finance company from an unlicensed retail seller void the contract?

Answer:

No.

Reason:

R. S. 1954, ch. 59, sections 249 to 260, known as The Motor Vehicle Sales Finance Act sets up a licensing procedure for certain sales finance companies and retail seller. Banks, trust companies and industrial banks, though defined as sales finance companies and subject to sections 249 to 260, are not required to be licensed.

Any sales finance company or retail seller who engages in their respective businesses without a license may be punished by a fine not exceeding \$500, section 258, I.

In the language of the court in *Burbank v. McDuffee*, 65 Me. 135, “It (the statute) does not make the sale void, unless by implication, and that a forced one. But forfeitures and the confiscation of honest debts are not to be implied. They must be the results of express legislation, and not a matter of inference.”

Hence, it follows that the contract is valid, even though the retail seller may be fined for failing to have a license.

Note:

Section 250 I, requires a retail seller to be licensed.