MAINE STATE LEGISLATURE

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July 19, 1968

Dean Fisher, M.D., Commissioner, Department of Health and Welfare
Attention: Earl W. Tibbetts, Director, Div. of Sanitary Engineering, Health and Welfare
Keith N. Edgerly, Assistant Attorney General

REFUND OF LICENSE FEES, re: MOTELS, CABINS, etc.

FACTS:

In January of 1968, Floyd R. Whitcomb of Brewer, Maine, was summoned into the Maine District Court in Bangor, Maine to answer to the criminal charge of operating cabins without a license. Mr. Whitcomb had previously licensed a motel located on the same premises and which was operated together with the cabins as a single business unit. He was found guilty in the District Court and appealed to the Superior Court. In the Superior Court in February, 1968, hearing waw had and on May 8, 1968, the decision of Justice David G. Roberts was filed showing the defendant not guilty, "for the reason that Chapter 561 of Title 22, MRSA does not require the defendant to obtain a separate license for his cabins which are located on the same premises and operated as a single business unit with his licensed motel; and to the extent Section 49 of the Rules and Regulations of the Department of Health and Welfare may be interpreted to require such separate license, it exceeds the authority delegated to the Department under Chapter 561." (The part in quotation marks is from Judge Roberts' decision.)

QUESTION NO. 1

Must we hold a public hearing as the above ruling will result in a different fee schedule than is listed in our current rules and regulations?

ANSWER NO. 1.

No.

OPINION NO. 1.

There will not actually be a different fee schedule. The schedule lists each classification separately, i.e., lodging place, motel, etc., and gives a fee to be charged for each. So long as only one of these classifications is licensed, the fee charged will not be affected in any way by the current ruling. It is only when one owner or operator wishes to license a combination of two or more of the classifications that the ruling of Judge Roberts will come into effect. Since Section 49 of the Rules and Regulations does not specify the number of licenses required for any given combination of classifications, it will not have to be modified in any way. This is inferred by that part of Judge Roberts' decision which reads as follows, "...to the extent Section 49 of the Rules and Regulations of the Department of Health and Welfare may be interpreted to require such a separate license, it exceeds the authority delegated to the Department under Chapter 561," (Underlining added.) Since it is an interpretation of the Rule upon which separate licenses have been required in the past, it follows that the rule itself need not necessarily be affected.

QUESTION NO. 2

Are we required to rebate license fees in the classifications effected by the above ruling and if so, from what date?

ANSWER NO. 2.

Yes, from the date that the regulation in its present legal form went into effect, but only upon written request.

OPINION NO. 2

In the first instance, it must be understood that the ruling by Judge Roberts does not have the final and binding effect that a Supreme Judicial Court ruling would have. Because the Attorney General's office is in agreement with Judge Roberts' decision, it should be given the same practical effect as a decision of the State's highest court.

Giving the ruling that effect, it must necessarily follow that as of May 8, 1968, and thereafter, no prospective licensee could legally be required to buy more than one lodging place license for any combination of lodging places, including motels, motor courts, cottages and overnight camps as long as they are located on the same premises and are operated as a single business unit. Since it was found to be illegal to charge one licensee for separate licenses, so it must be illegal to charge any other licensee for such separate licenses, particularly after the date of the ruling (May 8, 1968). It would also be just as illegal to collect the extra fee from those licensees who had purchased their licenses prior to this date for the year 1968.

So also it must follow from the above reasoning that all similar license fees charged in prior years under the regulation in its present form were also illegal. Regardless of the financial hardship and extra work that may be imposed upon the Department as a result of this ruling, rebates should be made in all applicable cases upon written request therefor.

KNE:cjp

Keith N. Edgerly,
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cc: Attorney General