

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

Keith H. Ingraham, Chairman

Ruling on cash sales in State Liquor Stores

*SYLLABUS:*

The word "cash" may not be extended to cover payments at State Liquor Stores made by credit cards, Bancardchecks, gift certificates or any other form of postponed payment.

*FACTS:*

The Liquor Commission has been asked periodically to allow people to make purchases through various means such as gift certificates and credit cards. Presently the Commission has been asked to allow use of Bancardchecks. Title 28, sec 55 sub-sec. 6 states that the Commission shall have the duty "To sell -- for cash". The Commission also has as a matter of policy, accepted travelers checks.

*QUESTION:*

May the Commission accept forms of payment at state liquor stores, other than legal tender such as Bancardchecks, credit cards, gift certificates and the like?

*ANSWER:*

No.

*OPINION:*

The Legislature in drafting the act covering the purchase and sale of liquor was quite insistent that all transactions involving liquor must be made on the basis of the product being paid for at the time of sale. All through the statute the Legislature indicates that it wanted no credit extended whether it is the State that is making the sale, the distributor selling to the wholesaler, the wholesaler dealing with the retailer or the retailer making a sale to the consumer. Periodically the Legislature has revised the law to conform with current commercial practices. It has not done so in 28 MRSA Sec. 55 sub-sec. 6.

Ballentine defines "cash": as "Ready money or money in hand either in current coin or other legal tender or in bank bills or checks paid and received as money". It further states, "In the absence of evidence of a usage or custom to the contrary, a sale on credit cannot be regarded as a sale for cash".

Cash has also been defined as " -- money, but it is frequently used as a term meaning the opposite of credit". *Hertwig v. Rushing* 182 P. 177.

Term "cash" is antonym of credit but includes coins and currency, cashiers checks and certified checks recognized by banks as appropriation of amount specified to named payee. *Greenberg v. Alter Co.* 255 Iowa 899.

In other words while some definitions extend the word "cash" to include *some form of checks* all definitions point to the fact that "cash" is the direct opposite of "credit". And where the Legislature has been most insistent that, except in very few instances, the

transactions dealing with liquor must be for cash, it is very obvious that the Commission may not accept a credit card, Bancardcheck, gift certificate or any other form of postponed payment in place of cash.

FREDERICK P. O'CONNELL  
Assistant Attorney General

October 31, 1968  
Education

Kermit S. Nickerson, Deputy Commissioner

Subsidy for pre-school handicapped children

*SYLLABUS:*

The Commissioner of Education, with the approval of the state board, may make rules and regulations governing the education of pre-school speech-defective children. Special-education programs for such children which have been approved by the state board are eligible for subsidy.

*FACTS:*

20 M.R.S.A. §§ 3111-3119 (1964) are concerned with the education of physically handicapped and exceptional children. 20 M.R.S.A. § 3111 (1964) states the purpose of the sections as follows:

“The purpose of this chapter is to provide educational facilities, services and equipment for all handicapped or exceptional children below 21 years of age who cannot be adequately taught with safety and benefit in the regular public school classes of normal children or who can attend regular classes beneficially if special services are provided.”

20 M.R.S.A. § 3113 (1964) in part provides:

“He (the Commissioner of Education) shall employ . . . such qualified personnel as may be needed . . . to . . . approve . . . a program of special education for handicapped or exceptional children. The commissioner, with the approval of the state board, shall make necessary rules and regulations for the proper administration of this chapter.”

20 M.R.S.A. § 859 (1964) prohibits admission of children into the public school system who have not reached a certain age.

In the light of these statutes, you ask the following questions:

*QUESTIONS:*

1. May the commissioner make rules and regulations concerning the education of speech-defective children below the minimum age limits of 20 M.R.S.A. § 859 (1964)?
2. Are approved special education programs for speech-defective children below the minimum age limits of 20 M.R.S.A. § 859 (1964) eligible for state subsidy?

*ANSWERS:*

1. Yes.