

MAINE STATE LEGISLATURE

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James S. Erwin, Attorney General

Attorney General

Jerome S. Matus, Assistant

Attorney General

Certificates of approval - Liquor Commission.

SYLLABUS:

The Liquor Commission cannot require separate certificates of approval for each brewery controlled by a manufacturer or foreign wholesaler of malt liquor unless the controlled breweries are separate legal entities.

FACTS:

In some instances, manufacturers of malt beverages control more than one brewery. Before doing business in the State of Maine, it is necessary under Title 28, Section 604 for the manufacturer to obtain a certificate of approval. A fee of three hundred dollars (\$300) is required with each application. Presently the Liquor Commission is requiring a certificate of approval from each plant regardless of ownership.

QUESTION:

Must the manufacturer obtain a separate certificate of approval for each plant it operates and pay a separate fee?

ANSWER:

See OPINION.

OPINION:

28 M.R.S.A. § 604 reads as follows:

"No manufacturer or foreign wholesaler of malt liquor shall hold for sale, sell or offer for sale, in intrastate commerce, any malt liquor or transport or cause the same to be transported into this State for resale unless such manufacturer or foreign wholesaler has obtained from the commission a certificate of approval. The fee therefor shall be \$300 per year, which sum shall accompany the application for such certificate.

"The certificate of approval shall be subject to the laws of the State of Maine and the rules and regulations which the commission has or may make. Any violation of such rules and regulations shall be grounds for suspension or revocation of such certificate at the discretion of the Administrative Hearing Commissioner."
(Emphasis supplied.)

The above statutory language means that a manufacturer or a foreign wholesaler must obtain a certificate of approval. It does not follow, however, that in all circumstances, only one certificate of approval must be obtained and one fee paid if there are multiple plants controlled by a manufacturer. If the manufacturer controls plants that are operated by wholly owned corporate subsidiaries, these subsidiaries are separate legal entities, and each one must secure and pay for a certificate. If, on the other hand, the plants that are "controlled" by the manufacturer are, in fact, owned by the manufacturer and do not have a legal ownership separate from the manufacturer, the statute requires that only one fee be paid and one certificate obtained.

JEROME S. MATUS
Assistant Attorney General

JEM/eh