January 17, 1969

Keith H. Ingraham, Chairman — Liquor Commission

Phillip M. Kilmister, Assistant — Attorney General

Appeals under Title 28, section 252 of the Revised Statutes.

SYLLABUS:

The only limitation upon evidence which may be submitted in an appeal from a refusal of approval of an application for licensure by municipal or county authorities is that the evidence must be relevant to the reasons certified for refusal by said authorities.

FACTS:

In your memorandum of January 10, 1969 submitted to this Office, you inquire as to whether or not a municipality is precluded from presenting any evidence in an appeal before the Commission as set forth in 28 M.R.S.A. § 252, in addition to the evidence presented in the original hearing held before municipal officers as provided for in the above-designated statute.

QUESTION:

In an appeal perfected under the terms of 28 M.R.S.A. § 252, is a municipality precluded from presenting evidence in a hearing before the Commission other than that which was presented at the original hearing for licensure?

ANSWER:

No.

REASONING:

The terms of 28 M.R.S.A. § 252 provide that an aggrieved applicant for a license may appeal to the Commission for a hearing on the refusal of approval of his application by municipal authorities. A hearing imports a determination of facts by a tribunal, in this case, the Commission, and is vastly different than a review.

The statute sets forth what may be determined by the Commission at an appeal hearing and is restrictive as to what evidence may be introduced only in terms of relevancy.

28 M.R.S.A. § 252 reads in part as follows:

> "...Upon notification of appeal, the municipal officers or county commissioners refusing approval shall promptly certify to the commission their reasons for refusal and evidence on such appeal shall be limited to the reasons specified. (emphasis supplied)

The legislature has not stated that municipal officers must certify the evidence upon which their reasons for refusal were founded. It is a cardinal rule of administrative law that successive trials or hearings de novo should be avoided and appellate review limited primarily, if not exclusively, to questions of law. However, a hearing, and this implies a fair hearing conducted pursuant to well established rules of procedure for the parties in interest, cannot be avoided for the sake of administrative efficiency.

To provide that no new evidence may be introduced by a party on appeal to an administrative agency or court, an appellate structure must exist which provides for a hearing before a subordinate arm of a given agency or court in the first instance.

This structure does not exist in regard to the granting of liquor licenses! A municipality is not a true subordinate agency of the Liquor Commission and it may approve or disapprove of an application for a liquor license for any reason, irrespective of the Commission's rules and regulations governing same.

> "The municipal officers can only approve or disapprove of an application to the commission for a license." Glovsky v. State Liquor Commission, 146 Me. 38, 77 A.2d 195 (1950).

All that a municipality must do relative to the granting of liquor licenses is: 1) hold a public hearing, and 2) approve or disapprove of a given application. If a disapproval is given and the aggrieved applicant appeals, it is then imperative for a municipality to certify to the Commission any reasons for said refusal. At an appeal hearing, a municipality is not precluded from presenting relevant evidence in support of its reasons for refusal.

PHILLIP M. KILMISTER
Assistant Attorney General

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