

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

scw BGE ✓  
September 4, 1969

Keith H. Ingraham, Chairman

Liquor Commission

Warren E. Winslow, Jr., Assistant

Attorney General

Interpretation of P. L. 1969, c. 165

SYLLABUS:

A hotel owner may sub-lease restaurant facilities and retain the right for himself to sell liquor by obtaining a \$1,000 liquor license pursuant to P. L. 1969, c. 165.

Hotels with fewer than 14 rooms will not lose their liquor licenses on October 1, 1969, if they hold valid, unexpired licenses on September 30, 1969.

FACTS:

The Maine State Liquor Commission has asked three questions relating to the effect of P. L. 1969, c. 165, which takes effect October 1, 1969.

QUESTIONS:

1) Whether a hotel owner will be able to sub-lease restaurant facilities in his hotel and retain the right for himself to sell liquor by obtaining a \$1,000 liquor license pursuant to P. L. 1969, c. 165?

2) Whether a hotel with fewer than 14 rooms which presently has a full year license pursuant to 28 M.R.S.A. § 701 and § 2 sub-section 9, will be validly licensed until December 31, 1969?

3) Whether a hotel with fewer than 14 rooms which obtains a part-time license pursuant to 28 M.R.S.A. § 701 and § 2 sub-section 9, before October 1, 1969, will be validly licensed for a six month period beginning with the date of the part-time license?

ANSWERS:

1) Yes.

2) Yes.

3) Yes.

Keith H. Ingraham

September 4, 1969

REASONS:

Pertinent parts of P. L. 1969, c. 165 reads as follows:

Sec. 1. R.S., T. 28, § 2, sub-59, repealed and replaced. Subsection 9 of section 2 of Title 28 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

" 9. Hotel. "Hotel" shall mean any reputable place operated by responsible persons of good reputation, where the public, for a consideration obtains sleeping accommodations and where meals may be served, whether or not under one roof. Each hotel shall be equipped with at least 14 adequate sleeping rooms when it is located in a municipality of 3,000 or less, 20 such sleeping rooms when located in a municipality having population of from 3,000 to 7,500 and 30 such sleeping rooms when located in municipalities having more than 7,500 population. ..."

A hotel shall be deemed to be serving meals when it provides on the premises a public dining room or rooms, open and serving food during the morning, afternoon and evening, and a separate kitchen in which food is regularly prepared for the public. ..."

Nothing in this subsection shall be held to prevent the commission from issuing part-time licenses to bona fide part-time hotels ...."

Sec. 2. R.S.T. 28, § 701, amended. The first paragraph of section 701 of Title 28 of the Revised Statutes is amended to read as follows:

Keith H. Ingraham

September 4, 1969

" Fees for full-year licenses shall be:

Hotel - Spirituous and vinous, in cities or towns having population of 10,000 or more either serving or not serving meals \$1,000.00 ... " (Emphasis supplied)

There is no requirement in this statute that meals be served at a hotel which has a \$1,000 license. Therefore, any sub-leasing of restaurant facilities by a Hotel does not affect the \$1,000 license.

The answers to the second and third questions may be handled in one discussion. The general rule in this type situation is stated as follows in 53 C.J.S., Licenses, § 14 (b):

"As in the case of statutes or ordinances generally, the repeal of a statute or ordinance, without a saving clause as to existing rights, usually takes away all rights and remedies given by the repealed statute or ordinance and defeats all pending proceedings for its enforcement, ..."

Further, it is stated:

"... All the privileges permitted by the license, and all the protection given thereby, although yet unexpired, are generally cancelled and revoked by the repeal of the law which authorized its grant unless the license, although obtained under the repealed law, is such a license as is required by the new law." (Emphasis Supplied)

Keith H. Ingraham

September 4, 1969

In Foster v. Dow, 29 Me. 442 (1849), a license to peddle was granted the Plaintiff on July 10, 1846, pursuant to an Act of 1843. The license was good for one year from date of issue. On October 1, 1846, the new law relating to licensing for peddlers came into effect which repealed the Act of 1843. Plaintiff was charged on June 8, 1847, with peddling without a license.

The Court in Foster held that the plaintiff could not be convicted as the Plaintiff had a license in conformity with the Act of 1846, although it was obtained under the Act of 1843 (which had been repealed). The court said, at page 447,

"But although the act of 1846 repeals that of 1843, it does not by any provision in it, vacate the unexpired licenses, granted by virtue of the latter act. Nor is it inferable, that such was the intent of the Legislature.

"A prosecution for a penalty cannot be sustained, after a law is repealed, without any saving clause, yet a right obtained under a statute may exist after its repeal....

"... The plaintiff had such a license as was required by the act of 1846, and it was therefore valid, though obtained under a law, which had been repealed ...." (Emphasis supplied)

When P. L. 1969, c. 165 becomes effective, certain of the provisions of 28 M.R.S.A. § 2 and sub-§9 (the former section dealing with "hotels" and their licenses) will be repealed and replaced according to the language of P. L. 1969, c. 165. A liquor license obtained under 28 M.R.S.A. § 2 sub-§9 is the same as that required under P. L. 1969, c. 165 (even though the definition of "hotel" may have been changed). Therefore, hotels with fewer than 14 rooms will not lose their liquor licenses on October 1, 1969.

WEN, Jr./mf

---

Warren E. Winslow, Jr.