

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

November 13, 1969  
Forestry

Austin H. Wilkins, Commissioner

Fill in great pond

**SYLLABUS:**

A littoral proprietor on a great pond who would deposit fill in such pond below ordinary low-water mark must first obtain the permit described in 12 M.R.S.A. § 514(3) (c) (Supp. 1968).

**FACTS:**

A littoral proprietor on a great pond placed fill therein during November, 1968. No facts are recited to indicate whether such fill extends below ordinary low-water mark.

**QUESTION:**

Must the proprietor obtain the permit described in 12 M.R.S.A. § 514(3) (c) (Supp. 1968)?

**ANSWER:**

Yes, if such fill extends below ordinary low-water mark.

**REASON:**

The boundary between private and public property on the shore of a great pond is ordinary low-water mark. *Wood v. Kelley*, 30 Me. 47 (1849), *Stevens v. King*, 76 Me. 197 (1884); cf. *McFadden v. Haynes Ice Co.*, 86 Me. 319 (1894). Accordingly, if the fill extends below ordinary low-water mark, it extends onto public property and permission for such encroachment must be obtained in the form of the permit to which reference has been heretofore made.

ROBERT G. FULLER, JR.  
Assistant Attorney General

November 13, 1969  
Liquor Commission

Keith Ingraham, Chairman

**SYLLABUS:**

A refund must be granted to the wholesalers for the excise tax imposed on malt beverages sold by wholesalers to United States military bases under 28 M.R.S.A. § 452.

**FACTS:**

The Liquor Commission taxes the sale of malt liquor by all wholesalers to all

retailers. 28 M.R.S.A. § 452. In some cases the Commission allows a refund. 28 M.R.S.A. § 452 provides in part that:

“ \* \* \*

“A refund shall be granted for the excise tax imposed by this State on malt beverages sold by wholesalers to any instrumentality of the United States or any Maine National Guard state training site accredited with exemption by the commission. A refund shall be granted for the excise tax imposed by this State on malt beverages sold to any vessel of foreign registry. Any wholesaler selling to such an instrumentality, training site or vessel shall present proof of such sale to the commission and shall thereupon receive from the Treasurer of State a refund of all state excise taxes paid in connection with such sale.”

The Commission currently interprets the word “accredited” to modify “instrumentality” as well as National Guard training sites. Further, it has refused to accredit either Rockland Station, Rockland, Maine, or Dow Air Force Base, Bangor, Maine. The tax is imposed on the wholesaler and the military installation is not directly taxed; however, the practical result of refusing to refund the wholesaler’s excise tax is that the wholesaler charges the non-accredited installation a higher price.

*QUESTION:*

Whether 28 M.R.S.A. § 452 gives the Commission power to refuse to refund to the wholesaler the tax on the malt liquor sold to federal bases?

*ANSWER:*

No.

*REASON:*

Our reasoning is based on legislative history. P. L., 1957, c. 355, § 5, said:

“Excise taxes on malt beverages imposed by the state shall not apply to malt beverages sold by wholesalers holding licenses from the commission to any instrumentality of the United States.”

This statute precluded the Commission from imposing an excise tax on malt liquor sold to United States military installations.

In 1963, the Legislature imposed a non-discriminatory tax on all malt liquor sold by wholesalers. This tax included malt liquor sold to United States government instrumentalities but provided for a refund of the excise tax to wholesalers selling to a United States government instrumentality. However, the 1963 law gave the Commissioner’s accreditation power over National Guard training sites.

P.L. 1963, c. 303, reads as follows:

“A refund shall be granted for the excise tax imposed by this state on malt beverages sold to any instrumentality of the United States or any Maine National Guard state training site accredited with exemption by the commission.”

The 1963 statute clearly provides for a refund under the given facts.

RICHARD W. GERRITY  
Assistant Attorney General