

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

2. After reading applicable provisions of the Maine statutes relating to specialized public education, we conclude that the State Board of Education is the body authorized to administratively determine whether a particular set of facts are, "within practical limits", such that an administrative unit is obligated to provide educational programs of the nature involved here. The second paragraph of §3111 authorizes each administrative unit to operate a program for trainable children as approved by the State Board of Education, under rules and regulations which the Board may prescribe. Section 3115 specifies that appropriated funds are to be paid administrative units or institutions according to regulations formulated by the State Board of Education "to permit adequate instruction and to prevent unnecessary use of state funds." The balance of the language of §3115 confines the use of appropriated funds to specified purposes as well as "for any other purposes approved by the state board as being necessary to carry out the purpose of this chapter". True, §3113 gives general supervision of the education of all children of school age in the State, including physically handicapped or exceptional children, to the Commissioner of Education; but we distinguish here between the exercise of general administrative supervision exercised by the Commission of Education, and the separate, independent authority of the State Board of Education when requiring an administrative unit to appropriate sufficient funds to provide for particular special instructional programs for physically handicapped or exceptional children. The decision that a given set of facts does or does not, "within practical limits", give rise to an obligation is of primary concern to the State Board of Education, whereas supervision of existing or ordered instructional programs is the function of the Commissioner.

3. Since the Commissioner of Education lacks authority to order performance by an administrative unit until the Board finds the facts are capable of performance "within practical limits", the Commissioner cannot absolutely require programs of special education for physically handicapped or exceptional children by administrative units absent such finding by the Board.

JOHN W. BENOIT, JR.
Deputy Attorney General

June 4, 1971
Maine State Police

Captain Emery H. McIntyre

Interpretation of Title 17 M.R.S.A. § 303

SYLLABUS:

Fair Associations must be in existence for two years before they can hold a license issued under 17 M.R.S.A. §303.

FACTS:

A fair association which has been in existence for less than one year has applied for a Beano license under the provisions of 17 M.R.S.A. § 301, et. seq.

QUESTION:

May the Chief of the State Police issue a license to the fair association under the terms

of 17 M.R.S.A. § 303 when the fair association has not been in existence for two years.

OPINION:

No.

REASON FOR OPINION:

Resolution of this question depends upon interpretation of the provisions in section 303 of Title 17 which pertain directly and indirectly to whether a fair association must be in existence for a definite time period prior to licensure. The Legislature in passing § 303 listed several classes of licensees permitted to hold such a license. Those classes are set forth in the first sentence of that section. While the 2 year existence requirement at least refers directly to veterans organizations, the language of the first sentence is unclear as to whether fair associations are included in the class or classes which must exist for 2 years prior to licensure. However, the second sentence of § 303 stating one exception to the 2 year existence limitation reads:

“Said 2 years’ limitation shall not apply to any chartered posts of veterans organizations, nationally established even though such posts have not been in existence for 2 years prior to their application for a license; *and* provided that a license may be issued to a fair association to operate such amusement in conjunction with its annual fair when sponsored, operated and conducted for the benefit of such fair association.” (Emphasis added)

Clearly, chartered posts of veterans organizations nationally established are not subject to the 2 year limitation. The use of the word *and* and then reference to (any) fair association sponsoring, operating and conducting Beano or Bingo at its annual fair merely spells out to the Chief of the State Police clear authority to issue a license for such an activity and does not remove the 2 year existence requirement.

Not specifically excepted, all classes of licensees with the exception of chartered posts of veterans organizations, nationally established, must exist for 2 years prior to licensure. Such classes are all mentioned in the first sentence of § 303 prior to language which expresses the 2 year existence requirement.

For these several reasons, the question posed is answered in the negative.

GARTH K. CHANDLER
Assistant Attorney General

June 14, 1971
Maine State Liquor Commission

Keith H. Ingraham, Chairman

Monthly Reports of Wholesalers

SYLLABUS:

Monthly sales reports to the Maine State Liquor Commission by Wholesalers of Malt Liquors and Wines are not “public record” within the meaning of 1 M.R.S.A. § 405.