MAINE STATE LEGISLATURE

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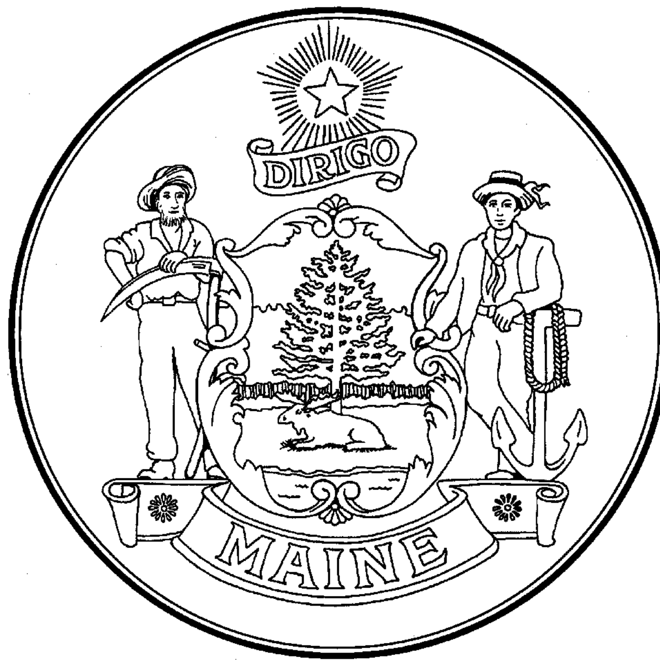

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years

1967 through 1972

QUESTION:

May the proceeds of the bond issues authorized by Me. Priv. & Spec. Laws 1965, c. 235 and Me. Priv. & Spec. Laws 1969, c. 181 be used to finance development of the criteria necessary to properly administer Me. Public Laws 1971, c. 535?

ANSWER:

No.

OPINION:

The 1965 bond issue, by its terms, is to raise funds " . . . to provide for the construction and equipment of pollution abatement facilities authorized under the Revised Statutes of 1954, chapter 79, section 7-A, and Acts amendatory thereof." Me. Priv. & Spec. Laws 1965, c. 235, § 1. The development of criteria to administer a law enacted in 1971 does not come within these cited purposes.

The 1969 bond issue, by its terms, is to raise funds " . . . to provide for the planning, construction and equipment of pollution abatement facilities authorized under the Revised Statutes and Acts amendatory thereof." In our opinion, the purpose for which you contemplate using the proceeds of this bond issue is not within the purposes envisioned by the Legislature. We cannot say that your contemplated purpose is planning, construction or equipment of a pollution abatement facility authorized by the Revised Statutes. In the context of the 1967 act, we construe the word "facilities" to include only inanimate items capable of being used in the reduction, treatment and disposal of waste, including, by the way of illustration and not by way of limitation, sewage treatment plants, industrial-municipal waste treatment plants, incinerators and cone burners.

ROBERT G. FULLER, JR.
Assistant Attorney General

August 18, 1971
Liquor Commission

Keith Ingraham, Chairman

P.L. 1971, Ch. 268, An Act Relating to Sale Price of Liquor

SYLLABUS:

Liquor licensees are entitled to a discount at the state store wherein prices have been reduced under the authority of Title 28 M.R.S.A., § 451, as amended.

FACTS:

The 105th Legislature enacted Ch. 268 of the Public Laws of 1971. It provides, by way of amendment to Title 28 M.R.S.A. § 451, that the Liquor Commission, with approval of the Commissioner of Finance and Administration, may reduce the price of liquor in one store. Similarly, there may be established at that store the price to which the licensee discount in Title 28 M.R.S.A. § 204 is to be applicable.

However, Section 204, also amended, contains a provision relating to licensee discount which appears to conflict with the provision in Section 451. The Liquor Commission indicates its belief that it was the intention of the Legislature that no licensee discount be applicable at the one store.

QUESTIONS:

1. Is the licensee discount applicable to purchases at the store which has reduced liquor prices under the authority of Title 28 M.R.S.A. § 451?
2. If the discount is applicable, is it to be applicable to:
   A. The regular retail price established at the one store for consumers (T. 28 M.R.S.A. § 204);
   B. A special "retail price" established at the store for the purpose of applying the 10% discount (T. 28 M.R.S.A. § 451)?

ANSWERS:

1. Yes.
2. The licensee discount is applicable to a price established for that purpose under Title 28 M.R.S.A. § 451.

REASON:

The applicable provisions are as follows:

> "The commission shall sell to such licensees spirituous and vinous liquor, except table wine, for a price of 10% less than the retail price established for the state retail store where the purchase is made provided that such discount shall not apply to federal taxes levied on and after November 1, 1941." P.L. 1971, ch. 268, § 1.
>
> "Notwithstanding the other provisions of this section, the commission, with the approval of the Commissioner of Finance and Administration, may reduce the price of liquor in one store and establish at that store the price to which the 10% discount in section 204 shall be applicable." P.L. 1971, ch. 268, § 2.

Since the above two provisions appear to be in conflict, it is necessary to resort to legislative intent in order to construe them. Legislative intent controls the construction of statutes. *Beckett v. Roderick* (Me. 1969), 251 A.2d 427.

It is the rule that in construing statutes the courts must ascertain and carry out legislative intent. The courts will consider legislative intent, the object it had in view, and the mischief it intended to remedy. The intention of the Legislature in enacting a statute must be sought from all its facts. See *Hanbro, Inc. v. Johnson,* 181 A.2d 249, 158 Me. 180. See also *Camp Walden v. Johnson,* 163 A.2d 356, 156 Me. 160. The legislative history of the provisions may properly be examined into. *Austin v. State,* 202 A.2d 794, 160 Me. 240, cert. den. 86 S.Ct. 636, 382 U.S. 1018, 15 L.Ed.2d 533.

Recitals of legislative intent, although not conclusive on the judicial branch, are entitled to consideration. *Toothaker v. Me. Employment Security Commission* (Me. 1966), 217 A.2d 203.

Statutory construction which leads to a result clearly not within the contemplation of the Legislature or which leads to a result which is absurd should be avoided, even though the strict letter of the law may have to be disregarded. See *Ballard v. Edgar* (Me. 1970), 268 A.2d 884 and *State v. Taplin* (Me. 1968), 247 A.2d 919. See also *Reggep v.*

Lunder Shoe Products Company (Me. 1968) 241 A.2d 802.

The legislation was introduced in the Legislature in the form of L.D. 1181 which provided that the Commission, with the approval of the Commissioner of Finance and Administration, might reduce the price of liquor in *any* of its stores so long as the price was not reduced to an amount which would produce an effective state liquor tax of less than 40%. As originally drafted, the bill also provided the Commission could sell to licensees spirituous and vinous liquor, except table wine, for a price of 10% less than the retail price *established for the store where the purchase is made.*

There were two amendments which were offered to the legislation (H-108 and H-166). The first amendment (H-108) provided that the Commission could reduce the price in only one store in the State of Maine.

The second amendment (H-166) provided the Commission could, at the one store, establish at that store the price to which the 10% discount in section 204 was to be applicable.

The Statement of Fact on the second amendment indicates its purpose:

> "*The purpose of this amendment would allow the State Liquor Commission to* utilize its discretion in reducing prices in order to effectively meet competition with liquor stores in other jurisdictions located around the borders of the State of Maine and *establish at that store, a price to which the discount of 10% in section 204 of Title 28 shall apply.*" (Emphasis supplied.)

Both amendments were subsequently adopted and L.D. 1181, as amended, became P.L. 1971, c. 268 quoted supra.

The question posed by the Liquor Commission involves an analysis of whether or not the amendment was effective to accomplish its stated purpose of the establishment of a special price to which the 10% discount in section 204 of Title 28 is to be applicable.

Section 204, as amended, indicates in clear terms that the Commission shall sell to certain licensees spirituous and vinous liquor, except table wine, for a price of 10% less than the retail price established for the store where the purchase is made.

Clearly, under either section 204 or 451 a discount is applicable to purchases by licensees.

The question is if the Commission reduces the price of liquor in one store, is a discount applicable to that reduced retail price or may a special retail price, for the purpose of applying a discount to that price, be established by the Commission.

It is our view that the legislative intention was clear. The Legislature desired to allow the Commission to reduce the retail liquor prices in one store and additionally to establish at that store a special "retail price" to which the 10% discount in section 204 of Title 28 shall be applicable. The amendment could have been drafted more artfully or more clearly.

The legislative intention was to provide for reduced prices for the *consumer* in order to meet competition from stores in other jurisdictions. Too, the Legislature by referring to licensee discount in the amendment to § 451 was clearly concerned that the amendment not put certain licensees at a competitive advantage. The amendment was designed to give the Commission the necessary flexibility to meet the problem.

To read the amendment differently from the result reached herein would be to render the phrase "establish at that store the price to which the 10% discount in section 204 shall be applicable" meaningless. We therefore advise, assuming action to reduce the prices in one store is properly taken under the provisions of section 451, as amended, that licensees may receive a discount at that store, which discount is to be applicable to a price established by the Commission with the approval of the Commissioner of Finance and Administration.

The price established for licensee purchases may, for example, be the same as or more than the retail price established for other than licensee purchases. Under the language of the amendment, it could be the same retail price as that established in all other retail stores. It could not be more. In short, the Legislature has left the matter of licensee discount pricing at one store up to the Commission, and the Commissioner of Finance and Administration, within established guidelines. Too, although the provision "may . . . establish . . . " can be read to reach an opposite result, we believe that once reduced prices are established at one store, a price must likewise be established to which the licensee discount is applicable.

JON R. DOYLE
Deputy Attorney General

August 9, 1971
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: The Gross Direct Premium Tax As Applied To A Special Contractual Insurance Arrangement

SYLLABUS:

THE ENTIRE SUM RECEIVED ANNUALLY BY A DOMESTIC INSURANCE COMPANY, IS A GROSS DIRECT PREMIUM AND IS TAXABLE AS SUCH, LESS RETURN PREMIUMS AND DIVIDENDS, UNDER THE PROVISIONS OF 36 M.R.S.A. §2511 WHEN THE SUM IS RECEIVED PURSUANT TO A SPECIAL CONTRACTUAL ARRANGEMENT WHEREBY A PORTION OF THE SUM RECEIVED IS COMPENSATION TO THE INSURANCE COMPANY FOR HANDLING OF THE INSURED CORPORATION'S LOSS CLAIMS AND THE BALANCE OF THE SUM RECEIVED IS PLACED IN A SPECIAL "LOSS FUND ACCOUNT" IN A BANK OR TRUST COMPANY FROM WHICH ACCOUNT THE INSURANCE COMPANY PAYS THE INSURED CORPORATION'S COVERED LOSSES.

FACTS:

There is proposed to be organized in the State of Maine an insurance company, which plans to enter into contracts with a number of large corporations. Pursuant to these contracts a corporation would turn over to the insurance company annually a substantial sum of money for payment of indemnity claims against the corporation and for compensation to the insurance company for the processing of the claims. The sums of money turned over to the insurance company would pursuant to a Loss Fund Agreement less the agreed upon compensation be turned over immediately by the insurance company to a bank or trust company and placed in a special trust account in the bank or trust company hereinafter referred to as the Loss Fund. From the Loss Fund claims against the insured corporation would be paid by the insurance company. The Loss Fund Agreement would provide inter alia, that the insurance company would have no right, claim or interest in the principal or income of the Loss Fund. Also, payments would be made out of the Loss Fund only to or for the account of the insured; no portion of the principal or income of the Fund would be paid to the insurance company for its own account.