

# MAINE STATE LEGISLATURE

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*Informal*

**NOT A FORMAL OPINION**

June 23, 1972

The Honorable Elden H. Shute, Jr.  
7 Knowlton Avenue  
Farmington, Maine 04938

Dear Senator Shute:

Your letter of May 15, 1972, has been referred to me for reply. You have asked whether Maine State Liquor Commission Rule 74 contravenes 28 M.R.S.A. § 305. My conclusion is that while it is perhaps a close question, the mischief sought to be remedied by the statute is not wine-tasting festivals, and thus the Commission's rule sanctioning such festivals is not in contravention of the statute.

28 M.R.S.A. § 305, reads, in pertinent part, as follows:

"Except as provided by sections 501 and 601 [exceptions which are not pertinent here], no licensee shall, directly or indirectly, offer or give any liquor, or any price premium, gift or inducement of any sort to other trade or consumer buyers.  
..."

"Licensee" is defined in 28 M.R.S.A. § 2 sub-§ 12 as the person to whom a license of any kind is issued by the Commission. Under Rule 74, only wine wholesalers may get the permission of the Liquor Commission to hold wine-tasting parties. A wine wholesaler is a licensee, his license being statutorily required by 28 M.R.S.A. § 651. There is thus no question but what a wholesaler is subject to the prohibitions of 28 M.R.S.A. § 305 just as a retailer is.

Activities prohibited by the statute (§ 305 are less well-defined; the thrust of the statute of course is directed against point of sale discounts or premiums (inducements) and rebates of all form. The point of sale may be manufacturer to wholesaler, wholesaler to retailer, or retailer to consumer. "Any liquor" is specifically forbidden to be offered or given to any buyer, whether retail (consumer) buyer or a buyer in the trade purchasing for resale. Clearly beer or wine cannot be offered by a retail store (off-premise licensee) as a premium, "gift" or inducement for buying other merchandise. Nor can any liquor be offered or given to someone buying other liquor, whether for consumption or for resale.

However, 28 M.R.S.A. § 305 does not prohibit gifts by licensees to all persons; it prohibits gifts to buyers. In my opinion the distinction is indicative of what situation the Legislature attempted to remedy by enacting the statute which is now 28 M.R.S.A. § 305 (L.D. 1032-1937). And this distinction between a buyer and all persons not then buyers is evidently the basis on which the Commission through its Rule 74 has sought to control gifts of wine (at wine-tasting festivals) which are not part of any purchase and sale transaction.

There has been no judicial interpretation of 28 M.R.S.A. § 305. The Legislative Record reveals nothing explanatory on the choice of words "trade or consumer buyers". What I have attempted to do is anticipate what the Maine courts' interpretation of the statute would be.

Here we are faced with an administrative agency charged in 28 M.R.S.A. § 55 sub-§§ 1 and 8 with the duty and authority to make rules and regulations for the administration, clarification, carrying out, enforcing and preventing violation of all laws pertaining to liquor. Such rules have the force and effect of law. I cannot find that their Rule 74 is inconsistent with 28 M.R.S.A. § 305.

I hope our views will be helpful to you in advising Mr. Bubar.

Very truly yours,

JK/mf

John Kendrick  
Assistant Attorney General