

# MAINE STATE LEGISLATURE

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August 9, 1972

R. J. Graham, Jr.

Liquor Enforcement

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**SYLLABUS:**

A harbormaster is not a law enforcement official prohibited by 28 M.R.S.A. § 201 from holding a liquor license.

**FACTS:**

28 M.R.S.A. § 201 proscribes eligibility requirements for persons granted liquor licenses. In pertinent part § 201 states "No license shall be issued in which any law enforcement official benefits financially either directly or indirectly".

**QUESTION:**

Is a harbormaster a "law enforcement official" within the meaning of 28 M.R.S.A. § 201 such that he is within a class of persons deemed ineligible to hold a liquor license?

**ANSWER:**

No.

**REASON:**

The powers and duties of harbormasters are set forth in 38 M.R.S.A. §§ 1-6. Essentially his duty is to enforce and carry out all rules and regulations of his town for making and keeping open channels for the safe and convenient passage of vessels in the harbors or other waterways of his town. He is empowered to assign mooring privileges at locations found suitable by him. He may order the master, owner or agent of any vessel obstructing free movement in a channel to remove the vessel. Although neglect or refusal to obey the order to remove can result in a fine of up to \$50 and up to 60 days imprisonment, the harbormaster has no power to arrest anyone refusing to obey his orders. His power to arrest is quite limited; 38 M.R.S.A. § 6 states "Harbormasters may arrest and deliver to the police authorities on shore any person committing an assault upon them or another person acting under their authority".

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The power of arrest is of the essence of a law enforcement official's authority. Law enforcement officers are defined in Black's Law Dictionary (4th Edition, p. 1029) as being those whose duty it is to preserve the peace.

"Statutes describing occasions when private citizens are privileged to deprive others of their freedom without committing the crime and tort of false imprisonment do not turn such citizens into 'law enforcement officers'." People v. Cheatham, 69 Cal. Rptr. 679, 682, 263 C.A. 2d 458.

In this State the common law arrest authority of a private citizen has not been abrogated by statute. That common law authority would include arrest for simple assault (misdemeanor) committed in one's presence, and arrest for aggravated assault (a felony) committed where there is a reasonable cause for the arresting citizen to believe the suspect committed the assault.

A harbormaster is granted arrest power by 38 M.R.S.A. hardly greater than that of a private citizen.

JK/mf

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