

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

policy which must be formulated in the first instance by the Commission. Once a decision is made, I recommend communicating it promptly to the Aroostook County Commissioners, particularly if the Commission anticipates restricting traffic flow or limiting physical changes to the road. A firm stand on the issue of access to and through the Waterway and paving of the road, when combined with the issues on appeal by the landowners, may cause the County Commissioners to abandon the entire plan. If necessary, of course, litigation could be used as a tool to enforce the decision of the Commission regarding access to the Waterway from the Realty Road.

JOHN M. R. PATERSON
Assistant Attorney General

October 19, 1972
Bureau of Alcoholic Beverages

Keith H. Ingraham, Director

Statutory Interpretation of 28 M.R.S.A. § 501

SYLLABUS:

Liquor Manufacturers' License requires payment of both rectifiers' fee and bottlers' fee where neither the rectifying process nor the bottling process is an integral part of the other.

FACTS:

28 M.R.S.A. § 501 authorizes "manufacturers' licenses" to be issued to persons engaged in various liquor processing operations, including the "rectifying" process and the "bottling" process. All manufacturers' licenses authorize the licensees to sell their finished product to the liquor commission, to other licensed Maine manufacturers and to purchasers outside of the State. License fees differ depending upon the particular processes of manufacturer any licensee is engaged in.

Lawrence and Company of Lewiston is engaged in the business of buying alcohol in bulk and rectifying it into whiskey, vodka, gin, and mixed cocktails and also bottling these resulting products in containers that ultimately reach the consumer.

QUESTION:

Is a rectifiers' fee of \$500, and additionally a bottlers' fee of \$500, required to license a manufacturer who has but one complete operation that engages him in both processes?

ANSWER:

Yes, both fees are chargeable.

REASON:

Generally a business subject to a general occupation tax cannot be divided, and an

additional tax imposed on some of the constituent elements of the business, *unless* the element on which the additional tax is imposed is not a necessary or usual part of the general business. *51 Am Jur 2d, Licenses & Permits, § 21*. In other words if someone has taken out a license for and paid a tax on a certain business he cannot be compelled to take out another license or pay another tax for anything which constitutes an essential part of such business. However, the mere fact that a person is engaged in several distinct occupations is no valid reason for permitting him to carry on one occupation pursuant to a license to carry on another. *51 Am Jur 2d Licenses and Permits, § 44*.

The Maine statute (*28 M.R.S.A. 501*) provides a broad classification of liquor licensing, i.e. "manufacturing", and in effect creates sub-classifications with differing fees for various occupations or processes. One person engaged in more than one occupation or process sub-classification must pay the prescribed fee for each process he is engaged in in order that his entire business operation will be permitted by the manufacturers' license issued him.

Factually, there is nothing to show that bottling in the sense contemplated by the licensing statute is of necessity an integral part of the rectifying business. The rectifier has an option of selling its finished product in bulk, in which case no bottlers' fee would be required, or of selling its finished product in retail containers (i.e. consumer containers) in which case a bottlers' fee in addition to the rectifiers fee is required.

JOHN KENDRICK
Assistant Attorney General

October 20, 1972
Mental Health & Corrections

William F. Kearns, Jr., Commissioner

Meaning of Term "Penal Institution" in Maine Election Statutes.

SYLLABUS:

The term "penal institution" used by the Legislature in the last sentence of the definition of an "absentee voter" in the State's election laws includes inmates of the Women's Correctional Center and Men's Correctional Center.

FACTS:

By inter-departmental memorandum dated October 12, 1972, addressed to the separate Superintendents of the Women's Correctional Center and the Men's Correctional Center, you set forth your views concerning whether inmates of the two reference institutions could legally vote by absentee ballots for candidates seeking State and County offices. In your memorandum, you direct the Superintendents of the two Correctional Centers to advise inmates to exercise their right of franchise, through the use of absentee ballots, for President and Vice-President, and also for State and county offices. Your memorandum urged the Superintendents to act immediately to accomplish the objectives set out in your memorandum and that in the meantime, you would seek an opinion of the Attorney General on the subject.