

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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.

QUESTION:

Whether the definition of “absentee voter” in the State Election Laws applies to the inmates of the Women’s Correctional Center and the Men’s Correctional Center regarding the recital that a person who is serving a sentence in jail or penal institution is not an absentee voter?

ANSWER:

Yes.

REASONS:

The last sentence of the definition of “absentee voter” in Title 21 of the Maine Statutes specifies that: “A person who is serving a sentence in a jail or penal institution is not an absentee voter.” 21 M.R.S.A. § 1, sub-§ 1 The third paragraph of your memorandum addressed to the separate Superintendents of the Correctional Centers offers the suggestion that the State Correctional Centers are not a “jail” or a “penal institution”, as you interpret the meaning of those words. Additionally, you note that the Centers exist not to inflict punishment, but solely to rehabilitate men and women sent to them.

The term “penal institution”, as used in the election laws of the State, is not meant, in our opinion, to be given a narrow construction by the Legislature. For example, note the language in *Brown v. State*, (Me. 1971), 274 A.2d 715, wherein the Law Court determined there was no material functional distinctions between the Men’s Correctional Center and the Maine State Prison. The Court described the two reference institutions as “penal institutions”. In the cited case, the Law Court was asked by a Correctional Center inmate to declare the provisions of the transfer law unconstitutional respecting administrative transfers of incorrigible prisoners from the Men’s Correctional Center to the Maine State Prison without notice or hearing because the two institutions were “functionally district”. The court declined to do so.

According to decisional law in Kansas, the Kansas State Industrial Reformatory at Hutchinson is a “penal institution”. *State ex. rel. Londerholm v. Owens*, 197 Kan. 212, 416 P.2d 259. In the District of Columbia, decisional law determined that for the purposes of divorce statutes, a sentence under the Youth Corrections Act is a sentence to a “penal institution”. *Courtney v. Courtney*, D.C. App., 214 A.2d 478. Although cases decided in other jurisdictions are not binding on us, still they can be helpful in their expressed analogies.

If the Legislature intended that the words “penal institution” appearing in the definition of “absentee voter” in the State’s elections laws meant only the Maine State Prison, it could have utilized such language as it did in setting forth definitions regarding probation and parole procedures. 34 M.R.S.A. § 1501, sub-§ 6. Since it did not do so, language appearing in *State v. Millett*, 160 Me. 357, is appropriate.

“We are ascertaining here not what the Legislature may have meant by what it said but rather are deciding what that which the Legislature said means.”

We find no reason to narrowly construe the term “penal institution” used by the Legislature in the last sentence of the definition of an “absentee voter” and accordingly advise you that inmates of the Women’s Correctional Center and Men’s Correctional Center are in “penal institutions” within the meaning of the term as used in the election laws.

JOHN W. BENOIT, JR.
Deputy Attorney General