

# MAINE STATE LEGISLATURE

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February 23, 1973

~~MARCH 15 1973~~

William Gautreau, Director  
Licensing Division  
John Kendrick, Assistant

Bureau of Alcoholic Bev.  
Attorney General

Corporate licensee; effect of reorganization

This is in response to your memorandum of February 5, 1973 requesting our advice regarding the license presently held by Eastland Motor Hotel Corporation.

The facts given in your memorandum and its referenced letter from the licensee's attorney are that the licensee (Eastland) is a wholly-owned subsidiary of Maine Hotel Corporation, which in turn is a wholly-owned subsidiary of Maine Management Corporation, a wholly-owned subsidiary of Dunfey Family Corporation, which in its turn is a wholly-owned subsidiary of Aetna Life and Casualty Corporation. The results of proposed reorganization of the multi-corporate structure will be (1) that on or about March 1, 1973, the licensed premises will be owned directly by a new (for our purposes) Aetna-owned subsidiary, Royal Coach, Inc. (Royal Coach, Inc., will later be changed in name to Dunfey Family Corporation - a matter which requires of your Division only a corresponding change of name on your records and license certificate); and (2) that the present licensee will cease to have any interest in the licensed premises. You ask whether a new license must be applied for by Royal Coach, Inc., and if so, whether under 28 M.R.S.A. § 203 the new license would be issued at the usual fee for new licenses or at the \$10 fee authorized for certain transfers by a 1971 amendment to § 203.

It is all too easy in a complicated transaction such as this one to lose sight of the fact that a liquor license is not an asset of the business, Jubenville v. Jubenville et al., \_\_\_ Mass. \_\_\_, 46 NE 2d 533, and that such license is purely personal in nature. In the absence of some express statutory provision for its transfer it may not be transferred or assigned. See 131 ALR 1336, at 1342. I do not read 28 M.R.S.A. § 203 as creating any exception for corporate licensees, as such, to transfer a license where an individual could not. The only exceptions to non-transferability contained in § 203 deal with death, insanity, bankruptcy, or receivership of licensees.

Likely confusion occurs in matters concerning § 203 because (1) the statute is poorly arranged, (2) it covers too many varied topics and uses the word "transfer" in three different contexts, i.e. transfer of the license, transfer fee for conveyance by a licensee of a minority interest in its premises, geographic relocation by any particular

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licensee, and (3) it addresses a few, but certainly not all, of the instances where sales of corporation shares by a corporate licensee will result in either a new license being required at a usual fee, a \$10 fee, or most ambiguously a shift of "control of the licensed premises".

I think that for purposes of approval of license applicants the Commission can certainly look beyond the named corporate applicant to establish true or ultimate ownership, but for the purpose of our concern here, to wit, when, and at what fee corporate licensees must secure new licenses, we must treat the corporations the same as natural persons and not look beyond the named corporate entity because there is no statutory authority for us to do otherwise except for the final sentence of § 203 which reads: "Any sale of stock of a corporate licensee which effects a change of control of the licensed premises shall be considered a transfer within the meaning of this section, and a new license must be purchased." Regarding this sentence of the statute its going to be a matter for the courts eventually to determine when control changes within the meaning of the statute, but my advice to you in administering § 203 in its entirety with respect to corporate licensees is to disregard all but the clear and probable cases of changed control (e.g. individual X sells to Y corporation all his stock in licensee ABC corporation which represented 40% of ABC ownership and the remaining 60% is held in equal amounts by three other unrelated individuals; whether or not "sale" includes an exchange of shares is another issue not yet determined by the Maine court but I think it probably does because "sale" in statutes is commonly construed as including exchange or barter. See Associates Discount Corp. v. C. E. Fay Co., 307 Mass. 577, 30 NE 2d 876, 880, 132 ALR 519).

It is my advice further that in administering 28 M.R.S.A. § 203 where the license is held by a corporation, primary attention should be directed to that named licensee as a legal entity. Under this approach we see that in 1971 the Eastland Motor Hotel Corporation throughout the transaction involving its corporate shares remained the legal entity holding title to the licensed premises. This is not true of the present transaction planned for 1973, where Eastland begins as the licensee, and Royal Coach, Inc. becomes the licensee. This change of licensee occurs not because of a change of name which would require no new license (nor a \$10 fee) but because its ownership

of the licensed premises is being transferred to Royal Coach, Inc., which although related is nevertheless a separate legal entity, i.e. a new licensee.

The usual fee for the new license to be held by Royal Coach, Inc. is properly chargeable. A \$10 fee is chargeable only where a minority interest in the premises has been transferred by the licensee.

JK/mf