

MAINE STATE LEGISLATURE

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November 16, 1973

Representative Edward C. Kelleher
29 Vine Street
Bangor, Maine 04401

Dear Representative Kelleher:

This is in response to your inquiry of 1 November 1973 as to the constitutionality of the statute which authorizes the State Liquor Store located in Kittery to sell liquor at lower retail prices than the other 87 state liquor stores.

It is the opinion of this office that the statute is constitutional.

We perceive the constitutional argument against lower prices at the Kittery store to be based upon the equal protection clause of the 14th Amendment. The equal protection clause relates to equality between persons, as such, rather than between geographic areas. Salsburg v. Maryland, 346 U.S. 545, 98 L.ed. 281, 74 S. Ct. 280. The principle does not require territorial uniformity. Ocampo v. United States, 234 U.S. 91, 58 L.ed. 1231, 34 S. Ct. 712.

28 M.R.S.A. § 451 authorizes the Liquor Commission, with the approval of the Commissioner of Finance and Administration, to reduce the price of liquor in one store. All Acts of the Legislature are presumed to be constitutional, and this is a presumption of great strength. In re Spring Valley Development (Me. 1973), 300 A.2d 736. The Kittery location was singled out to meet the competition of substantially lower prices at the nearby Portsmouth, New Hampshire state liquor store. There is a State interest in avoiding the loss of all liquor tax to Maine that would normally have been collected through liquor sales, were it not for the earlier circumstances of Mainers travelling just beyond their state line to buy liquor more cheaply than they could buy it in Maine.

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Now that the Kittery store has been built and put into operation (it was designed for large volume, with lower overhead expenses per dollar of sales), any person who can buy liquor at any Maine liquor store can buy at the Kittery store. The Kittery store does not charge unequal prices to anyone among its retail customers; its lower prices are just not as readily taken advantage of by people living and shopping farther from Kittery, or York County, than by those who live and shop nearby.

There is no unconstitutional discrimination presented merely by the fact that some Maine citizens live far from Kittery and for that reason do not buy liquor at that state store. In State v. Griffin, 69 N. H. 1, 39 A. 260, the proposition was broadly stated which is applicable here:

"A law which confers equal rights on all citizens of a state, or subjects them to equal burdens and inflicts equal penalties on any person who violates it, is an equal law, even though no one can enjoy the right, be subjected to the burden, or infringe its provisions without going to or being in a particular part of the State."

We also note another line of attack that might be made on the constitutionality of 28 M.R.S.A. § 451. Section 451 speaks of revenues from all state liquor stores in terms of liquor tax, consumers tax and excise tax. M.R.S.A. Const. Art. IX, § 8 requires all taxation upon real or personal property to be assessed equally (subject to the exception provided by Amendment CXIV which allows different assessment rates for different land uses). Because a given brand and bottle size of liquor sells for less in Kittery than the same item sells for elsewhere, there is less tax upon that single item collected by the State when it is sold in Kittery than when it is sold in another store. The answer to this attack is that the tax is not unequal taxation upon property, forbidden by M.R.S.A. Const. Art. IX, § 8, regardless of how it is denominated in § 451 as a liquor tax, consumer tax, or excise tax. The tax is an excise tax on the privilege of consuming the liquor. M.R.S.A. Const. Art. IX, § 8 does not control the imposing of excise taxes. State v. F. H. Vahlsing, Inc., 147 Me. 417, 88 A2d 144.

Very truly yours,

JON A. LUND
Attorney General

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