

# MAINE STATE LEGISLATURE

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May 6, 1974

Keith H. Ingraham, Director

Bureau of Alcoholic Beverages

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Attorney General

**Sale of Lottery Tickets**

**SYLLABUS:**

The Bureau of Alcoholic Beverages may, subject to the discretion of the Director of State Lotteries, be licensed to sell lottery tickets at specific locations, a separate license being required for each location. The Bureau is entitled to receive, for deposit to the General Fund, commissions resulting from any properly licensed sales of lottery tickets made by said Bureau.

**FACTS:**

8 M.R.S.A. § 354(D) empowers and directs the director of state lotteries (hereinafter director) to "in accordance with [8 M.R.S.A. Chapter 14] and the rules and regulations of the [State Lottery Commission (hereinafter the Commission)] license as agents to sell lottery tickets, such persons, as in his opinion, who (sic) will best serve the public convenience and promote the sale of tickets or shares." 8 M.R.S.A. § 355 qualifies, to some extent, and further defines the director's discretion in licensing agents as follows:

1. Factors. No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing such license, the director shall consider such factors as:

A. The financial responsibility and security of the person and his business or activity;

B. The accessibility of his place of business or activity to the public;

C. The sufficiency of existing licensees to serve the public convenience; and

D. The volume of expected sales.

For the purpose of this chapter, the term "person" shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, receiver, trustee, assignee, referee or other person acting in a fiduciary or representative capacity, whether

appointed by a court or otherwise, and any combination of individuals. "person" shall be construed to mean all departments, commissions, agencies and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.

8 M.R.S.A. § 353(k) requires that rules promulgated by the Commission shall include "the manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the general public." Pursuant to this directive, the Commission has provided that lottery ticket sales agents shall receive as compensation 5% of the value of their ticket sales. As further compensation, any sales agent selling a winning ticket will receive 1% of the amount of the prize won by the holder of that ticket.

#### QUESTIONS & ANSWERS:

1. Can the Maine Bureau of Alcoholic Beverages be licensed to sell lottery tickets? Yes, subject to the discretion of the Director of State Lotteries.
2. If so, must the Bureau apply separately and pay a separate license fee for each separate location? Yes.
3. Will the Bureau receive, for deposit to the General Fund, any commissions resulting from its sale of lottery tickets? Yes.

#### REASONS:

8 M.R.S.A. Chapter 14, in effect, provides for a system of licensing of locations for the sale of lottery tickets. Under §353(G), the rules promulgated by the Commission "shall include . . . the number of types of locations at which tickets . . . may be sold." (Emphasis supplied). Among the factors to be considered by the director, in reviewing license applications, are "the accessibility of [the potential licensee's] place of business or activity to the public" (emphasis supplied) and "the sufficiency of existing licenses to serve the public convenience." The director can only make a meaningful evaluation of these factors with respect to a fixed location.

Except for this restriction to "location sales", and within the rules and regulations promulgated by the Commission, the director is given extremely broad discretion in licensing sales agents. Any business or activity which maintains a specific location for dealing with the public in some legitimate capacity (not necessarily a strictly "business" capacity) other than as a lottery ticket sales agency, may, subject to the discretion of the director, be licensed to sell lottery tickets at that location if such business or activity fits one of the listed categories under the definition of "person" in §355.

Further, in conformance with the theory of licensing of locations; a single organization could not, under authority of one license, conduct ticket sales at several locations, but rather such organization is required to obtain a separate license and to pay a separate licensing fee for each location at which it intends to sell tickets. This ensures the director an opportunity to evaluate each location in accordance with the criteria set out in §354(D) and in 355 (A-D).

The Bureau of Alcoholic Beverages, as an instrumentality of the State, may, subject to the discretion of the director, be licensed to sell lottery tickets at specific locations, a separate license being required for each location.

B M.R.S.A. Chapter 14 does not distinguish between public and private sales agents on the question of compensation. The inference is rather that all sales agents will receive compensation.

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