

MAINE STATE LEGISLATURE

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May 29, 1974

William E. Gautreau

Alcoholic Beverages

Harrison B. Wetherill, Jr., Asst.

Attorney General

Liquor Licensing Provision Franchises

I have received your request for an opinion as to whether a hotel franchisor is required, under the Liquor Laws, to be licensed along with the hotel owner-operator-franchisee and the lessee-operator of the hotel's dining and cocktail lounge facilities. Any franchisor who would, under a franchise agreement, have control over the exercise of the privileges granted by a liquor license beyond merely requiring compliance with applicable laws, must be licensed under 28 M.R.S.A. § 203. Further, under 28 M.R.S.A. § 251, the interest of a franchisor is among those interests which must be disclosed on any application for a liquor license.

The statutes of the State of Maine relating to liquor licenses contain the following provisions:

"Except as otherwise provided in this section, no license privilege nor any interest in a license privilege shall be sold, transferred, assigned or otherwise subject to control by any person other than the licensee, and in case of sale, transfer or assignment of the business or any interest in the business in connection with which a licensed activity is conducted the license holder shall immediately send in his license to the commission and submit a statement under oath showing the name and address of the purchaser or any other person directly or indirectly interested in the enterprise" 28 M.R.S.A. § 203.

"All applicants for license shall be required to file applications in such form as the commission shall require and every application shall disclose the complete and entire ownership or any interest in the establishment for which a license is sought" 28 M.R.S.A. § 251.

I have received a letter from attorney Charles P. Barnes II describing the provisions of a franchise agreement such as is involved here. Under this agreement a franchisee must maintain a high moral and ethical atmosphere, must comply with all applicable laws, must keep its premises and accommodations clean, must provide quality service, must permit regular inspection by the franchisor, must comply with standardized rules of operation established by the franchisor, and

obtain prior approval by the franchisor of any sublease of a portion of the facilities. Failure on the part of the franchisee to conform to the above would provide cause for termination of the franchise agreement. The license privilege under such an agreement would be "subject to control by [a] person other than the licensee" and the franchisor would have to be licensed under 28 M.R.S.A. § 203.

The disclosure requirements of 28 M.R.S.A. § 251, require ownership in the licensed establishment to be made known to the commission (they are confidential records) "completely and entirely." In addition (because the disjunctive "or" is used) any other interest in the establishment by anyone other than the license applicant must be disclosed. Broad disclosure was intended.

HBWJr

AN INFORMAL OPINION