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August 19, 1974

Keith H. Ingraham, Director — Alcoholic Beverages

Phillip M. Kilmister, Assistant — Attorney General

Question Relating to 28 M.R.S.A. § 301

In your memorandum under date of August 7, 1974 submitted to this office, you inquire as to whether or not a parsonage is different from a parish house, and further, if said distinction exists, whether or not premises may be licensed for the sale of alcoholic beverages within a distance of 300 feet of said parsonage.

There is a vast amount of authority which states that "parsonages" or "rectories" are not exempt property within the context of real estate taxation statutes and there is equally impressive authority to support the conclusion that said buildings do not qualify for protection, defined by statutes, from proximity to premises licensed to sell alcoholic beverages, such as 28 M.R.S.A. § 301.

The test to be applied in every instance is to determine the primary purpose and usage of a given building whether it be termed a "parsonage" or otherwise. The New York Court in Mandelcorn v. Burkman, 42 N.Y.S. 2d 716, 292 N.Y. 543, 54 N.E. 2d 385 (1944) has held that a parsonage or rectory is used primarily as a residence for a pastor and his family and not for "church purposes" so as to fit within the protection of a liquor license statute very similar to 28 M.R.S.A. § 301.

The Michigan Court, among others, has likewise ruled in a case where the parsonage was located on church land, that a rectory or parsonage ordinarily serves primarily as a place of residence.

> "Statute prohibiting issuance of a liquor license to an establishment within 500 feet of a church or school building did not prohibit issuance of a liquor license to a store which was within 500 feet of a rectory that was located on church property, where record failed to show that rectory had been used as a church or school building." Tabaczka v. Michigan Liquor Control Commission, 342 Mich. 370, 70 N.W. 2d 689 (1955).

Clearly, the modern signification of the word "parsonage" refers simply to the residence of a parson attached to a local church or religious congregation. (See Harmon v. North Pacific Union Conference Ass'n of Seventh Day Adventists, 462 P. 2d 432 (1969).

The applicable language of 28 M.R.S.A. § 301 reads as follows:

> "No new hotel, restaurant, tavern or club licenses shall be granted under this Title to new premises within 300 feet of a public or private school, school dormitory, church, chapel or parish house. . . ." (Emphasis supplied)

Under normal circumstances, a parsonage cannot be considered a "chapel or parish house" within the meaning of the above-quoted statute, as the latter clearly import places of religious worship.

PMK/mf