

MAINE STATE LEGISLATURE

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December 24, 1974

Keith H. Ingraham, Director

Bureau of Alcoholic Beverages

Harrison B. Wetherill, Jr., Ass't.

Attorney General

Sale of beer and wine for off-premises consumption in unincorporated places with less than 20 residents.

You have indicated in your memorandum of November 22, 1974, that at least two unincorporated towns, Lambert Lake and the Sugar-loaf area, have not had an opportunity to vote on the following two new local option questions:

12. Shall this municipality or unincorporated place authorize the sale on Sunday of malt liquor for consumption off the premises by such licensees who are permitted to make such sales during the rest of the week?

13. Shall this municipality or unincorporated place authorize the sale on Sunday of table wine for consumption off the premises by such licensees who are permitted to make such sales during the rest of the week?

You have asked whether there is any way in which the residents of these areas might proceed to vote on the above two questions. The answer is yes.

The statutes concerning local option questions have been the subject of repeated amendments and have become extremely complex. On almost every occasion in which new local option questions have been adopted, the procedures set out for voting on such questions have not been in conformity with past practice. This is the case with the above two new questions. On all past local option questions, the Secretary of State has been prohibited by statute from holding an election in any unincorporated place with less than 20 residents; however, under 28 M.R.S.A. § 4, residents of all municipalities and unincorporated places, regardless of size of population, should have had an opportunity to vote on the above two local option questions at the general election held in November, 1974. A new election should now be held by the Secretary of State in order to afford persons resident in unincorporated areas with less than 20 residents an opportunity to vote for the first time on the above two questions.

The procedure for the first vote to be held on local option questions #12 and #13 is entirely provided for by § 4 in the following language:

"Licensees who are licensed to sell malt liquors in retail stores not to be consumed on the premises shall have the right to sell malt liquors for off-premises consumption on Sunday between the hours of 12 noon and midnight. . . in a municipality or unincorporated place where a majority of votes cast in the municipality or unincorporated place in a general election shall answer in the affirmative to the following local option question:

"Shall this municipality or unincorporated place authorize the sale on Sunday of malt liquor for consumption off the premises by such licensees who are permitted to make such sales during the rest of the week?
. . .

"The foregoing general election shall be held in November, 1974.

"Licensees who are licensed to sell table wines in retail stores not to be consumed on the premises shall have the right to sell table wines for off-premises consumption on Sunday between the hours of 12 noon and midnight. . . in a municipality or unincorporated place where a majority of votes cast in the municipality or unincorporated place in a general election shall answer in the affirmative to the following local option question:

"Shall this municipality or unincorporated place authorize the sale on Sunday of table wine for consumption off the premises by such licensees who are permitted to make such sales during the rest of the week? . . .

"The foregoing general election shall be held in November, 1974."

Prior to 1973, § 4 contained the following language:

"Unincorporated place shall mean for the purposes of this section an unincorporated place where the total number of persons resident is 20 or more as shown by returns to the State Tax Assessor as provided by Title 36, section 1421."

The above sentence was repealed by Chapter 788 of Public Laws of 1973, and there is currently no distinction made in § 4 between unincorporated places with less than 20 and those with more than 20 residents.

Previous to my receiving your request for a written opinion Bill Gautreau had asked me orally whether the County Commissioners or the Liquor Commission had the authority to authorize off-premises sales of malt liquors or table wines in an unincorporated place with less than 20 people where no vote had been taken. My answer to this question was then, and still is, in the negative.

HARRISON B. WETHERILL, JR.
Assistant Attorney General

HBWJr./ec
cc: Joseph T. Edgar
Secretary of State