

# MAINE STATE LEGISLATURE

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January 13, 1976

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Interpretation of 17 M.R.S.A. § 1058

You have asked whether 17 M.R.S.A. § 1058 makes it unlawful for a commercial business to display a live animal as part of an exhibit set up by the firm to promote a product it sells. From our conversations, I understand the facts to be more specifically that a certain commercial business wishes to display dogs and cats in its exhibit at an agricultural trade show. The purpose of the display and the exhibit will be to promote pet food sold by that firm.

17 M.R.S.A. § 1058 makes it unlawful, among other things, to display live animals which have been dyed or otherwise artificially colored, or to display any live fowl or turtle under two months of age for certain uses. It is my understanding, however, that no live fowls or turtles will be displayed and that the dogs and cats will not be dyed or otherwise artificially colored. Accordingly, these portions of the statute are not in question here. 17 M.R.S.A. § 1058 also makes it unlawful ". . . to sell, offer for sale, give away, raffle or display any life animal, fowl or reptile as a fund-raising device." The question therefore is whether these dogs and cats will be displayed as a fund-raising device. For the reasons more fully set out below, we believe the answer is negative.

1 M.R.S.A. § 72 states in applicable part that:

". . . unless such construction is inconsistent with the plain meaning of the enactment. . .

(3) Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases and such as have a peculiar meaning convey such technical or peculiar meaning."

While numerous dictionaries were examined, in only one dictionary was the phrase "fund-raising" found. The phrase is found in A Supplement to the Oxford English Dictionary, Vol. 1, 1972, which contains words coming into common use in the English-speaking world in relatively recent times. "Fund-raising" is not actually defined in this dictionary; 1/ rather, examples are given of how the phrase has been popularly used.

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1/ The entry from the Supplement containing these examples is attached hereto.

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It appears that this particular phrase, "fund-raising," has not been commonly used to denote the obtaining of a sum of money by business or commercial organizations. The phrase appears to be popularly used in connection with the obtaining of a sum of money by charitable, educational, governmental or other non-profit organizations.

In Pollini v. Fuller Road Fire Department, 321 N.Y.S.2d 411 (Supreme Court, Trial Term, New York, 1971) the Court referred to a statutory definition of "fund raising activity." Section 204-A(1)(b) of the General Municipal Laws of New York states in applicable part that:

"'[f]undraising activity' means a method of raising funds to effectuate the lawful purposes of a fire company, but shall not include . . . the conduct of a business or other commercial enterprise except on temporary basis for a period or periods not to exceed a total of ninety days in any calendar year." (emphasis added)

While the New York statutory definition is not, of course, binding in this State, it does give further indication of the peculiar meaning or definition of fund-raising. Applying this definition to the facts before us, it is evident that the dogs and cats will not be displayed as a fund-raising device. The organization displaying these animals is a commercial organization, and the purpose of the display is the promotion of a product of the firm (presumably with the hope of increasing sales and profit). The animals are not being displayed by a non-profit organization as a means of obtaining funds for that organization.

In addition, 17 M.R.S.A. § 1058 not only prohibits the display, but also prohibits the sale of any live animal as a fund-raising device. Thus, if the phrase "fund-raising" were interpreted to include the obtaining of a sum of money by a business or commercial organization, then the statute would, for example, make the sale of any animals by licensed pet shops unlawful. Aside from the constitutional questions such an interpretation would raise, this would create an absurd result. It is a principle of statutory construction that "[t]he legislature is presumed not to intend an absurd result." State v. Larrabee, 161 A.2d 855, 859 (Me., 1960).

Since the answer to your first question is negative, your second question need not be answered.

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DR:mfe

*Thresh. Math.* (ed. 2) 1931, 375. Volterra used the terminology "functions depending on other functions," and the special case of "functions of lines," for what were subsequently called functionals by Hadamard. *Math. Ann.* [11] is called a functional of  $\phi$  when its value depends on all the values assumed by  $\phi$ . 1938 E. Hille *Math. Anal.* Functional analysis and semi-groups. 1966 R. Stone *Math. in Soc. Ser. 1* 11. Often when taking a decision, what we have to maximize, or minimize, is a functional rather than a function. 1968 F. J. Yessou *Math. Space* Part 1. The theory of the topology of metric spaces is not only the basis of functional analysis, but also admits many branches of classical analysis.

**functionalism.** [F. FONKTIŌNĪZM. + ISM.] 1. *Social Science.* The method of studying, or the theory of, the functional interactions and adaptations of particular phenomena within a given framework or structure. 1914 J. H. Watson *Behavior* 1.9. We advance the view that behaviorism is the only consistent and logical functionalism. 1932 *Psychol. Social Sci.* 11. 524. The reason is probably the fact that the whole trend of the social process since Darwin has been in the direction of functionalism and might be described as its verification and validation. 1933 P. Rabin *Method & Theory Ethnol.* vi. 129. Why a new term like functionalism should be applied to it is not at all evident. 1937 R. H. Lowie *Hist. Ethnol. Theory* viii. 235. Malinowski's functionalism is avowedly anti-structuralist, anti-historical, and treats each culture as a closed system except insofar as its elements correspond to vital biological urges. 1944 H. Malinowski *Soc. Theory of Culture* x. 117. The type of criticism levelled against functionalism, to the effect that it never can prove why a specific form, or table-implementation of a theoretical concept, is prevalent in a culture, derives from the presentist craving for first causes. 1951 R. H. May *Intro. to Robert A. Stebbins Social Psychol. of Community* 224. Functionalism has settled down to the middle of the road. American psychology. 1956 J. H. M. Beattie in A. T. Peacock *Contemp. Med. Knowl.* 239. But aside to all forms of functionalism is the view that the facts of social life may not usefully be thought of as a collection of separate elements. 1963 C. J. Jameson Jr. *Anti-Structuralist. Anthropol.* v. xv. 299. Therefore, histo-geographical concepts should not be excluded from the field of structural studies, as was generally implied by the widely accepted opposition between "diffusionism" and "functionalism".

2. *Regarding for the function and purpose of a building as regulating its shape and style. Also in extended use.*

1930 *Observer* 29 June 20. Sugar cube architecture, or to be impressively abstract "Functionalism". *Ibid.* 3 Oct. 19. This is what is called the architecture of functionalism. The architectural term arose purely out of the purpose of the building. 1935 *Fortnightly* Apr. 410. We are now told that "functionalism" is the one and only test of art. 1941 *Washington Post*, Feb. 26/2. His denunciation of modern "functionalism" will not satisfy all readers, though it will make many of them chuckle: the theory that any building which is well designed is made best and up of all was All Right. 1955 S. Stravinsky *Making of Form* 1. Functionalism is the philosophy of people who talk about a work of art as a "well done job" like any other piece of plumbing. 1957 C. H. Chapman *History of Art* xxvii. 421. The theories for which the Bauhaus stood are sometimes condensed in the slogan of "functionalism": the belief that if something is artistically designed to fit its purpose, we can let beauty look after itself.

**functionalist.** [F. FONKTIŌNĪZM. + IST.] 1. *Social Science.* An adherent or advocate of the functional approach (see **FUNCTIONALISM** 1). Also *attrib.* (see *ad.*).

1914 J. H. Watson *Behav. Mon.* 18. The difference between functional psychology and structural psychology, as the functionalists have so far stated the case, is unintelligible. *Ibid.* 19. The terms structural, perception, affection, emotion, volition are used as much by the functionalists as by the structuralists. 1931 R. S. Woodworth *Contemp. Psychol.* 1931, iii. 48. This attempt of the functionalists to re-define the definition of psychology by lining it up with biology. 1933 P. Rabin *Method & Theory Ethnol.* ii. 24. The so-called functionalist school of Kulevitch-Brown and Malinowski. 1937 R. H. Lowie *Hist. Ethnol. Theory* viii. 239. There is only one natural unit for the ethnologist: the culture of all human unity at all periods and in all places; only *then* the functionalist has, defined his particular culture within that frame of reference, does he know what he is talking about. 1951 R. B. MacLennan in Robert A. Stebbins *Social Psychol. of Community* 224. For the functionalist psychology is also a function, one of the organism's ways of adjusting itself. 1952 W. J. H. Sprott *Social Sci. Rev.* 2. 227. The "functionalists" such as Malinowski and Kulevitch-Brown come to our aid. At least every society must provide means of satisfying the basic needs of its members, and we can therefore explain many of their institutions in terms of the function they perform to this end. 1961 *Ox. Mag.* 1 June 387. Professor Evans Pritchard's criticisms of "functionalist" (i.e. un-historical) anthropology have been made in earlier occasions. 1970 E. H. H. *Lessons* 1. 2. Most... broadly speaking they are anthropologists in the style and tradition of Malinowski. In contrast, Claude Lévi-Strauss is a social anthropologist in the tradition of Frazer.

2. An adherent of functionalism in design. *My attrib.* (or *as attrib.*), exhibiting functionalism.

1932 H. Robertson *Mod. Archit. Design* iv. 140. The functionalist, in theory at any rate, seeks in design only

... of the functionalist with the strict dictates of the conventional functionalist.

**functionalize, v.** *Add: U.S.* In the theory of business management: to distribute or assign (work) with due regard to the special function of the individual worker. Hence **functionalization**, the system governing such assignment of work.

1924 R. H. Lyson *Indust. Management* 25. Functionalization has brought with it basic changes in the structure of industrial organizations. *Ibid.* 26. These functionalized forms. *Ibid.* 31. Functionalized departments working through one foreman. 1925 W. H. Lippitt *Management* 105. As business grows ever larger and becomes increasingly functionalized and specialized. *Ibid.* 118. The functionalization of all industrial departments. 1928 *Times Lit. Suppl.* 4 Apr. 186. 1. Collectivization and functionalization, in short, are facts, or rather, series of events, because they have happened historically and inevitably.

**functionally, adv.** (Later examples)

1927 E. A. Sorenson *Soul of Grammar* 3. Two cases might differ functionally without differing morphologically. 1934 H. Rivin *Art & Industry* vii. 417. For sitting upright, actually the stool of the bench is all that is functionally necessary. 1951 F. P. Evans *Practical Social Anthropol.* p. 5. 22 (Montagu) had the idea of everything in a society and its ancient being functionally related to everything else. 1952 *Nature* 30 Apr. 378. 1. The indications are clear that the ancestral middle Miocene hominoids were structurally and functionally advanced in this locomotor style.

**functor** (fɒŋkt(ə)r) [f. **FUNCTION** sb. 1. + OR, after type **factor**.] 1. *Logic.* A function or operator.

1937 A. S. Sauer *Pr. Group's Logical Syntax Lang.* v. 3. p. 14. In order to express properties or relations of position by means of numbers, we shall use functors. *Ibid.* Besides such descriptive functors, we make use also of logical functors. For example: "sum (1, 3)" has the meaning: "(1 + 3)". 1947 H. Rivin *Art & Industry* vii. 417. Among the functors, the unique mathematical functors are of particular importance. 1951 J. L. Kavanagh *Analogue's Synthesis* iv. 78. The principle of my notation is to write the functors before the arguments. In this way I can avoid brackets. 1955 E. H. Heister *Lang. Mod. Physics* vi. 232. Newton's first law finds a "natural" translation in, e.g. (M)R x (V) = F, if the functors R, V, and F are being at rest, being in uniform motion, and being acted upon by a force, respectively. 1963 *Mod. Atom* XXXII. 144. One should have "an exist" itself; this modal functor... is valid to the course of the exposition.

2. *Linguistics.* = **FORM-WORD**; also: used more widely, to include similar affixes, etc.

1958 C. F. Hockett *Course in Mod. Ling.* xxvii. 269. There are at least three types of grammatical forms which are to be classed as functors. 1964 R. A. Hall *Introd. Ling.* iii. 25. These elements which mediate grammatical functions are termed "function-words" or "functors". 1965 *Linguist.* 12 June 1965. 1. In themselves propositions (which may be described as structure-words or functors) have no lexical meanings. 1967 R. A. Wallace *Soc. & Scie. Instruct.* 45. In many natural words like *and*, *but*, *or*, ... which are variously defined as function words, form words, operators, functors, or *logophors*, are defined grammatically rather than, or as well as, lexically.

Hence **functorial**.

1951 J. L. Kavanagh *Analogue's Synthesis* iv. 72. All these may be called functorial propositions, since in all of them there occurs a propositional functor, like *if*, *then*, *or*, *and*. 1955 A. N. Piaton *Formal Logic* 1. iv. 94. If quantifiers and functorial variables are introduced, we may obtain just as true a system.

**fund, sb.** *Add: f.* **FUND-RAISING** adj. and sb.; *no fund-raiser.*

1957 V. Packard *Golden Penetrators* 1. 8. A great many advertising men, publicists, fund raisers, personal experts, and political bosses, still do a straightforward job. 1961 *Guardian* 29 Jan. 2276. Money should, be available for a monumental effort: the Press gave the fund-raisers its backing. 1960 *Strat.* *Am. Econ.* (Nat. Resources Planning Board) ii. 39. 1. The entire present contributory basis of the social security system would be reexamined with a view to bringing fund-raising for social security with fund-raising for all other governmental purposes. 1954 *Kosciuszko Inst.* *Review* xx. 224. Willy asked me to write a fund-raising pamphlet about it. 1950 *Times* 30 Dec. 1. A worldly young Rabin who is more interested in fund-raising than in religious rites. 1964 A. Wykes *Contemp.* 5. 22. The fund-raising potentials of the state lottery. 1970 *New Yorker* 14 Nov. 31. 2. Marriage and fatherhood eventually nudged him into public relations and fund raising.

**fund, v.** *Add: f.* **FUND.** To supply with funds, pay (a person); to finance (a position or enterprise).

1900 *Westm. Gaz.* 6 July 6. The War Office had given the London Scottish command to understand that they would "fund" the 32nd Co. who were in readiness to join the emergency camp. 1966 *New Statesman* 7 Jan. 274. (Adv.) First posts are to be led from a Mayor Committee Grant. 1970 *Soc. Just.* Jan. 28. 4. We work in a system in which research projects are funded by grants. 1970

scape before colonization by man in general; or by any particular group of men.

1928 J. H. Lawson in *Univ. Calif. Publ. Geogr.* III. 1. The forces which condition and shape a natural landscape are many and of varied origin, each fluctuating in intensity through time. The natural fundament which they modify, on which they erect their proper structures, is steadily varied from place to place, or is changing through various processes. 1934 *Ann. N.Y. Acad. Sci.* 34. 19. An extension of its dictionary meaning, fundament is used to indicate the foundation on which the work of man has been built. Fundament may be defined as the base of the earth as it existed before the entrance of man into the scene. 1954 *Univ. Calif. Publ. Geogr.* 1. 248. What the fundament of "natural" landscape is really founded like.

**fundamental, a.** *Add: f.* **FUNDAMENTALISM** 1. *Philos.* (see *quot.* 1951).

1893 A. Cotton *Leit. Geol.* vol. 11. vi. 171. The pre-Cambrian rocks may be divided into two great series. At the base lies a vast mass of gneisses, schists, and igneous rocks, which, known as the "Fundamental Complex", is regarded as the oldest of the whole. 1910 *Environ. Biol.* II. 301. The so-called "fundamental complex", an assemblage of acid, basic and intermediate igneous rocks, associated together in a complex of extraordinarily intricate. 1961 L. P. Sauer *Univ. Geogr. Terms* 200. **Fundamental complex.** In geology the rocks of the "original" crust of the earth formerly applied to the great areas of pre-Cambrian crystalline rocks. It is still used although it is now recognized that probably no part represents the "original" crust of the earth.

**fundamentalism** (fʌndə'mɛntəlɪz'm) [FUNDAMENTAL a. + ISM.] A religious movement, which orig. became active among various Protestant bodies in the United States after the war of 1914-1918, based on strict adherence to certain tenets (e.g. the literal inerrancy of Scripture) held to be fundamental to the Christian faith; the beliefs of this movement; *opp.* **liberalism** and **modernism**.

1923 *Daily Mail* 24 May 8. Mr. William Jennings Bryan has been carrying the toll for his great eloquence in a campaign on behalf of what is termed "fundamentalism". 1925 K. Lake *Kelg. Yesterday & Tomorrow* 6. There has been in America some surprise at the sudden rise of Fundamentalism in the last five years. 1927 *Observer* 3 June 3. Fundamentalism and the Klan Klan are signs of alarm on behalf of the older ideal. 1955 *Times* 25 Aug. 143. "Fundamentalism" appears to have been used first in connection with the (American) Northern Baptist Convention of 1920 to describe the more conservative adherents who desired to retain, retrain, and re-emphasize the fundamentals of our New Testament faith. *Ibid.* Now "fundamentalism" appears to describe the bigoted, bigoted portion of all Biblical criticism, a mechanical view of inspiration and an excessively literalist interpretation of scripture.

No fundamentalist, an adherent of fundamentalism. *Also attrib.* or *as attrib.* and *trans.*

1922 *Outcrop.* Rev. July 20. The fundamentalist crowd. *Ibid.* 21. The Fundamentalists have been fortunate in their own ministerial labor. W. J. Bryan. 1925 K. Lake *Kelg. Yesterday & Tomorrow* 6. To the most energetic group, but the least well equipped, is the fundamentalist. *Ibid.* 62. The fundamentalists have a lot, but it is certainly not according to knowledge. 1926 H. F. Brown *Lord & King in Exile* 12. The fundamentalist movement sought to re-establish the Bible as the literal word of the true God (Hebrew, Muslim, and the Puritan). 1955 *Time* 25 Aug. 143. The danger of the new fundamentalist movement, one of the encouraging developments, is that Christian teachers to day is in a relationship which is growing up between scientific and religious thought. 1959 *New Yorker* 14 June 45. I've never been a flashy stylist, like Arthur. I'm a fundamentalist. Arthur is a teacher. I am married and conservative.

**Fundamentum.** Short for **FUNDAMENTUM RELATIONIS**.

1599 *Burrows* vii. *Logic* 23. Here note that of these schools men the thing from which the application is made, is called in Latin *fundamentum*, in English the foundation. 1883 F. H. Bradley *Prin. Logic* II. ii. 1. 295. What is the fact or phenomenon constituting the *fundamentum* of the relation? 1907 W. James *Meaning of Truth* (1909) vii. 17. This relation, like all relations, has its *fundamentum*. *Ibid.* In the case of the relation between "being" and "being" the *fundamentum* is a world in which there is a relation, one in which there is now a will and an executor.

**fundamentum divisionis** (fʌndə'mɛntəm dɪvɪzjənɪs) (fundamentum divisionis). *Logic.* Pl. -mentum (-mentum). The principle or basis of logical division of a genus into its constituent species.

1849 W. Thomson *Util. Laws of Thought* (ed. 2) 134. The division must be made according to one principle (*Fundamentum divisionis*). 1870 W. S. Jevons *Elem. Lessons Logic* xii. 105. The size of the book is too small to discuss the ground, basis, or principle of division, commonly called the *Fundamentum Divisionis*. 1908 H. W. B. Joseph *Introd. Logic* v. 104. The *Fundamentum divisionis*, the principle of basis of a division, is that aspect of the genus in respect of which the species are differentiated. 1956 J. O. Urmson *Philos. Analysis* v. 68. The distinction of "positive-negative" has a different *Fundamentum divisionis* from the distinction "particular-general".