

# MAINE STATE LEGISLATURE

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February 11, 1976

Keith H. Ingraham, Director

Alcoholic Beverages

Phillip M. Kilmister, Assistant

Attorney General

Licensure as Wholesaler of Malt Beverages and Table Wine and  
Licensure as a Liquor Salesman

Your memorandum of November 17, 1975, asks whether there would be a "conflict of interest" if the president or another officer of a licensed wholesaler of Gallo wine products were licensed as a salesman pursuant to 28 M.R.S.A. § 902, for the purpose of selling Gallo fortified wine to the Liquor Commission. As a Gallo salesman, the officer in question could sell only to the Liquor Commission, but his duties would presumably include promoting the use of Gallo fortified products by such licensed retailers as hotels and restaurants. I interpret your question as including not just technical conflicts of interest, but also violations of the dual licensing restrictions in Title 28. We conclude that the license proposed does not, as such, violate any of the restrictions in Title 28 but caution you that the terms and conditions under which the Pine State officer serves as a fortified wine salesman must not include, nor should they result in, Pine State dealing exclusively in Gallo wine products.

Section 601 of Title 28 prohibits any officer, director or stockholder of a manufacturing corporation from being interested as a director, officer, or stockholder, in a corporate wholesale licensee. Section 304 prohibits any Maine retail liquor licensee from having any interest in a Maine manufacturer's or wholesaler's license or a certificate of approval and vice versa. Neither expressly prohibits an officer of a wholesaler from becoming a licensed salesman for a manufacturer. Nor do these sections, or any other section of Title 28, have the breadth of expression or statement of purpose that would permit such a prohibition to be implied.

Section 304 of Title 28 also makes it unlawful for any licensee directly or indirectly to receive any money or thing of value from any person or corporation engaged in the manufacture of liquor. Since "licensee" includes a person "to whom a license of any kind is issued by the Commission," read literally the Section would prohibit a licensed salesman, such as an officer of Pine State, from receiving any compensation from the manufacturer represented by that salesman. This part of Section 304 does not ban dual licensing as such, but only applies to receipt of payments by a licensee. It is clear, however, that this part of Section 304 cannot mean what it appears to say, since its literal terms would bar any salesman, whether or not associated with a wholesaler, from receiving compensation, including commissions on sales to the Commission. Consequently, we conclude that this statute does not bar the arrangement described in your memorandum.

Keith H. Ingraham, Director  
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The agreement under which a Pine State officer operates as a salesman for Gallo, and the actual operation of the arrangement, should, however, be examined in light of two additional sections of Title 28. Section 305 prohibits a licensee from soliciting or receiving allowances, rebates, or concessions. If the officer in question performs no duties as a Gallo salesman other than to serve as a conduit for sales to the Liquor Commission and receive commissions, it may be appropriate to consider whether the arrangement is a disguised rebate or concession to Pine State in violation of this Section. If this arrangement were sufficiently advantageous to Pine State that it sought to persuade other wine manufacturers to adopt the same method of doing business, and proposed to cease dealing in their products unless they did so, the circumstances might suggest a violation of Section 604, which prohibits manufacturers from imposing exclusive dealing requirements on Maine wholesale licensees.

  
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PHILLIP M. KILMISTER  
Assistant Attorney General

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