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Liquor Licenses Law Enforcement Officers
28 M.R.S.A. § 201

STATE OF MAINE

Inter-Departmental Memorandum Date February 7, 1977

To Keith H. Ingraham, Director Dept. Alcoholic Beverages
From Phillip M. Kilmister, Assistant Dept. Attorney General
Subject Interpretation of 28 M.R.S.A. § 201, last sentence

In your memorandum under date of January 12, 1977, submitted to this Office, you indicate that the husband of a licensee (malt liquor retail store) has recently been appointed a deputy sheriff for Washington County, and you inquire as to whether or not the license previously issued to the deputy sheriff's spouse remains legally valid, in view of certain specific language in 28 M.R.S.A. § 201 governing eligibility for licensure.

The two questions which you specifically ask are as follows:

1. Would Mr. McLean (husband of the licensee) as a law enforcement official be considered to be benefitting directly or indirectly?
2. What would be the status of the license if it is determined that he is?

The answer to the first question is in the negative, thereby rendering moot any answer to the second question.

In my opinion, the status of a licensee's spouse as a law enforcement official does not, per se, constitute grounds for either the refusal or renewal of licensure.

The last sentence of 28 M.R.S.A. § 201 was enacted by C. 356, § 5 of the Public Laws of 1951 and reads as follows:

"No license shall be issued in which any law enforcement official benefits financially either directly or indirectly."

There is no definition of what constitutes direct or indirect financial benefit and since the above-quoted language is in the nature of a prohibition, it must be strictly construed in favor of the applicant for licensure, absent any evidence that the spouse of the applicant does, in fact, have a distinct financial interest in the business subject to licensure.

A New York decision of recent vintage is most germane and illuminative of the precise question which you have posed, and has clearly held that the status of one's spouse may not be the sole basis for denial of a liquor license.


In interpreting a statute similar to the language of 28 M.R.S.A. § 201, the New York Court in the case of Walpole v. State Liquor Authority, 356 N.Y.S.2d 462 (1974) has held that an "applicant (wife) is not disqualified from holding a retail liquor license on the sole basis of her husband's position as a state policeman."

The New York statute subject to judicial interpretation read in pertinent part as follows:

"It shall be unlawful for any police commissioner, police inspector, captain, sergeant, roundsman, patrolman or other police official or subordinate of any police department in the several villages, towns and cities of this state, to be either directly or indirectly interested in the manufacture or sale of alcoholic beverages or to offer for sale, or recommend to any licensee any alcoholic beverages. . . ." (emphasis supplied)

The New York Court in Walpole placed heavy emphasis upon the principle of equal protection of laws and the right of a wife to operate a business and earn a living in any lawful manner free from the interference or control of her husband.

In conclusion, I do not intend to overemphasize the holding in the above-designated judicial decision, but simply wish to point out that an applicant for licensure, whose spouse is a law enforcement official, should not be denied a liquor license solely because of the occupational status of said spouse.


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Assistant Attorney General

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