

MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 19, 1977

Honorable Matthew C. Levine
Senate
Legislative Post Office
State House
Augusta, Maine 04333

Re: Repeal of 28 M.R.S.A. §1204 by L.D. 1434

Dear Senator Levine:

Your question as to whether it is necessary to retain as law the provisions of 28 M.R.S.A. §1204 has been referred to me for response.

Section 1204 provides for a forfeiture proceeding - an in rem civil action - for the disposition of liquors, and their containers, which have been seized by law enforcement officials pursuant to 28 M.R.S.A. §1203 because they were kept or deposited for unlawful sale. Such proceedings have traditionally been established by the legislature to provide for the disposition of seized contraband (both per se and derivative) goods. See, e.g., 17-A M.R.S.A. §§1053-54;¹ 22 M.R.S.A. §2387.

The primary purpose of §1204 is to protect the property rights and interests of innocent owners of the seized liquors. State v. Bartlett, 47 Me. 396 (1860). Thus, for example, if A's liquor is stolen from him and is being kept or deposited by B for unlawful sale at the time of its seizure, the procedure created by §1204 affords A, the innocent owner, an

1. The recently enacted provisions of 17-A M.R.S.A. §§1053-54 were taken virtually verbatim from 28 M.R.S.A. §§1204-05.

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opportunity to appear in court and defend his rights respecting the liquor. Moreover, the forfeiture proceeding ensures that an impartial tribunal will determine the appropriate disposition of the seized liquor in the event that someone claims that the liquor was not kept or deposited for unlawful sale or that not all of the liquor seized was so kept. In view of the need to protect innocent owners of seized liquor and to provide for a fair and impartial means of disposing of such liquor, this office would advise that 28 M.R.S.A. §1204 not be repealed.

However, if the Legislature should choose to repeal §1204 a number of statutory modifications will be necessitated. First, 28 M.R.S.A. §1201 would have to be amended because that section references and incorporates the forfeiture procedure prescribed by §1204 as the procedure to be followed for the forfeiture of conveyances seized pursuant to §1201. Second, 28 M.R.S.A. §1205, which sets out the procedure for the proceeding for the forfeiture of seized liquor, should be repealed (or incorporated in its entirety into §1201 if the Legislature should elect to retain a forfeiture proceeding for seized conveyances) since it would no longer serve a purpose. Third, 28 M.R.S.A. §1210 should be repealed or amended because that section is premised upon the existence of §1204 proceedings. Fourth, 28 M.R.S.A. §1211 should be repealed or amended because that section is premised upon an order of forfeiture resulting from a proceeding commenced under §1204.

Finally, assuming that you choose to retain the §1204 proceeding, I bring to your attention an apparent conflict between the first sentence of 28 M.R.S.A. §1205, which mandates that the court order seized liquor forfeited to the county in cases where no claimant appears, and the first sentence of 28 M.R.S.A. §1211, which mandates that all liquors declared forfeited be turned over to the State Liquor Commission. Assuming, in view of the chronology of the enactments, that it is the desire of the Legislature that forfeited liquors be turned over to the State Liquor Commission, the conflict can be eliminated by striking the words "to the county in which they were seized" in the first sentence of §1205.

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If you have additional questions regarding this matter
or if I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Michael D. Seitzinger". The signature is written in dark ink and is positioned above the typed name.

MICHAEL D. SEITZINGER
Assistant Attorney General

MS:ld

cc: Honorable Stephanie Locke

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