

MAINE STATE LEGISLATURE

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Restaurants licenses

30 MRSA Sec 2751
22 MRSA Sec 2492
Department of Human Services

STATE HOUSE, AUGUSTA, MAINE

Date June 22, 1977

To James Datsis, Engineering Technician, Health Engineering

From James Eastman Smith, Assistant Attorney General JES

Subject Title 22 MRSA Sec. 2499, Chap. 562

QUESTION: Does Title 22 MRSA Sec. 2499 or Chapter 562 clearly establish if one license is required for an eating or lodging place in a community or is the chapter ambiguous to the effect that it allows a community to license an eating or lodging facility and charge a license fee contrary to state law and rules.

ANSWER: Title 22 MRSA Sec. 2492 (Chapter 562) requires a license by the State of Maine Department of Human Services in order to conduct, control, manage or operate, for compensation, any eating establishment, eating and lodging place, lodging place, et. al. Section 2499 of the same Chapter enables municipal inspectors, after meeting specific statutory preconditions, to carry out the inspection function. However, licensure remains firmly in the grasp of the Department of Human Services.

A municipality has only that "police power" that the legislature grants to it. Title 30 MRSA Sec. 2751 requires a license to be obtained from the municipality before a person may operate as an innkeeper, victualer or tavernkeeper. Title 30 MRSA Sec. 2752 requires municipal officers, inter alia, to meet as a "licensing board". A person is required to meet municipal standards as adopted by the municipality as well as be of "good moral character" in order to be licensed as an innkeeper, victualer or tavernkeeper by the licensing board. A fee may be charged for the issuance of said license. A penalty is provided for noncompliance with the licensure provisions of Title 30 MRSA Sec. 2751.

Considering the preceding, a State license issued by the Department of Human Services is required of the places enumerated in Title 22 MRSA 2492. However, a municipality may also license innkeepers, victualers and tavernkeepers pursuant to Title 30 MRSA 2751 and charge a fee therefor. Furthermore, a municipality may, after proper notice and hearing, revoke said license. (Title 30 Sec. 2752, 2757). Consequently, there appears to be a dual licensure situation between the State and municipalities as the laws presently apply to tavernkeepers, victualers and innkeepers.

JES:mm