

MAINE STATE LEGISLATURE

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Liquor Wholesale sales practices
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August 22, 1977

Honorable John L. Martin
Speaker of the House
Box 276
Eagle Lake, Maine 04739

Dear Mr. Speaker:

This responds to your request for advice as to whether certain practices of beer and wine wholesalers in dealing with retail stores are prohibited by Maine liquor control statutes.

The practices in question include:

1. Setting up, arranging, stocking and otherwise establishing and maintaining displays of beer and wine for sale.
2. Direct stocking of shelves and arranging and rearranging of beer and wine on shelves for retail sale.
3. Affixing price stickers, marks or labels to beer and wine offered for sale.
4. Taking back or giving retail outlets credit for goods received in damaged or broken condition.
5. Taking back and giving credit for goods remaining unsold at the end of a specific time period or at the end of a specific season, particularly in the case of retail outlets that close at the end of seasons or whose business varies widely depending on the season.

Our analysis of Maine law indicates that none of the above practices are specifically prohibited by Maine law. We do not comment on the extent to which such practices may be allowed or prohibited by federal law. Such information should be obtained from federal officials responsible for interpreting and implementing such laws.

DISCUSSION:

The restrictions on sales of liquor including beer and wine are specified by 28 M.R.S.A. §§ 301 through 306 and § 601. Several of these restrictions must be addressed in determining the answers to the question specified above.

First, 28 M.R.S.A. § 303 prohibits the sale of liquor on credit under certain circumstances. However, nothing in § 303 explicitly states or could be interpreted to imply that retailers may not return either damaged or undamaged goods to wholesalers and receive either credit or repayment from the wholesalers for those returns. Accordingly, 28 M.R.S.A. § 303 does not bar the activities specified in numbers 4 and 5 above. Credits for return of goods similarly are not barred by either 28 M.R.S.A. § 304 or 28 M.R.S.A. § 601 which also address relationships of liquor licensees and beer and wine wholesalers.

The second sentence of 28 M.R.S.A. § 304 provides as follows:

"Except as herein provided, it shall be unlawful for any licensee or any applicant for license, directly or indirectly, to receive any money, credit, thing of value, indorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person, association or corporation within or without the State, if such person, association or corporation shall be engaged, directly or indirectly, in the manufacture, distribution, sale, storage or transportation of liquor; or if such person, association or corporation shall be engaged in the manufacture, distribution, sale or transportation of any commodity, equipment, material or advertisement used in connection with the manufacture, distribution, sale, storage or transportation of liquor."

This sentence may have applicability to the activities described in numbers 1 through number 3 above, if those activities would be interpreted to constitute either a "thing of value" or "financial assistance of any sort" the provision of which is prohibited by § 304.

We do not interpret the incidental services relating to stocking and arranging shelves and displays and of fixing prices as constituting such things of value or financial assistance as are prohibited by § 304. Section 304 is designed to prohibit direct financial incentives from wholesalers or licensees to either encourage licensees to sell particular brands of liquor or to place particular brands of liquor at a competitive price advantage compared to other brands of liquor.

The stocking and pricing activities addressed in § 304 do not constitute such things of value or financial assistance. They are merely incidental services provided in the course of delivering good to stores.

In this connection, it should be noted that despite an analgous statutory prohibition, it has long been the practice of wholesalers of milk to provide similar services to many milk retailers. Thus, under the Maine Milk Law, practices which are destructive of specified minimum prices, including but not limited to "any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity" are prohibited. 7 M.R.S.A. § 2954-7. However, neither this prohibition nor the prohibition specified in 28 M.R.S.A. § 304 prohibits wholesalers from providing incidental services such as stocking and arranging shelves and affixing prices in connection with their delivery activities.

Similarly, the prohibitions on premiums and rebates addressed by 28 M.R.S.A. § 305 do not extend to the activities described in numbers 1 through 5 above.

The critical sentence of § 305 reads as follows:

"No licensee shall offer to pay, make or allow, and no licensee shall solicit or receive any allowance, rebate, refund or concession, whether in the form of money or otherwise, in connection with the purchase of liquor dealt in by such licensee."

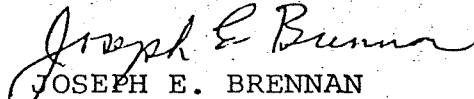
We do not interpret this section to prohibit the incidental services discussed above. Further, we do not interpret the ban on rebates or refunds to prohibit wholesalers from taking back and giving the retailer credit or repayment for unsold or damaged goods. The rebates or refunds prohibited by § 305 relate to price concessions, kickbacks or other price concessions which may be made for initially accepting goods for sale or as a result of selling goods not returned to the manufacturer. Of course, in the case of goods returned to the manufacturer, the credit or repayment by the manufacturer should not exceed the amount initially paid to the manufacturer by the retailer for the specific goods.

I would emphasize further that this area might be an appropriate area for regulation by the Bureau of Alcoholic Beverages. Should such regulations be published, certain aspects of practices relating to taking back of damaged or unsold goods may be prohibited or regulated. Our comments here thus should be limited to the fact that, absent regulation, Maine law does not prohibit the activities specified in numbers 4 and 5 above. However, should the Bureau of Alcoholic Beverages choose to exercise regulatory authority in this area, it may be that certain practices in connection with the activities specified in §§ 4 and 5 above, might be regulated or prohibited.

The last section which must be specifically addressed is 28 M.R.S.A. § 601. Section 601 prohibits beer and wine manufacturers or holders of certificates of approval from loaning any money, credit or equivalent thereof to any wholesaler for equipping, fitting out, maintaining or conducting, either in whole or in part, a business establishment where malt liquor or table wine is sold, excepting only the usual and customary commercial credit for malt liquor or table wine sold - then specifying certain exceptions including painting vehicles, furnishing advertising signs, and furnishing uniforms. This would prohibit a manufacturer or holder of a certificate of approval from furnishing to wholesalers such materials as coolers or other permanent display material. Further, the general prohibition on providing things of value or other inducements specified in § 304 would presumably prohibit wholesalers from giving licensees such similar valuable equipment as coolers or permanent display cases in connection with sales of liquor. However, this prohibition cannot be construed to include prohibition of temporary advertising display paraphernalia which would have no value after use as an advertising display and is constructed of cardboard or in some other matter indicating that it is not intended to be a permanent fixture.

I hope this information is helpful.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Louis E. Page, Director
Bureau of Alcoholic Beverages
Malt and Wine Division