Liquor Licenses: Termination by local option vote
28 MRSA 101-103

STATE OF MAINE

Inter-Departmental Memorandum Date September 6, 1977

To Keith H. Ingraham, Director Dept. Bureau of Alcoholic Beverages

From Phillip M. Kilmister, Assistant Dept. Attorney General

Subject Interpretation of Local Option Provision of Title 28 M.R.S.A. § 101-103

Under date of April 6, 1977 you submitted a memorandum to this Office in which you sought clarification as to the disposition of existing licenses in a municipality which votes to negate future licensing of premises for the sale of alcoholic beverages in a local option election.

Although your inquiries (without mention of a specific municipality) related to the status of three licensees in the Town of Smyrna Mills, because said Town had recently voted from a "wet" to a "dry" status, your questions were equally relevent to any municipality which might choose to revert from a "wet" to a "dry" status through the conduct of local option elections.

Although your memo was answered on April 14, 1977, this Office did not issue an opinion on the matter, based upon the belief that there had been a voluntary relinquishment of the licenses in question and because (largely through the efforts of your Office) a new law was introduced in the Legislature which would clarify the status of existing licenses in those municipalities which might vote "dry" in the future. (Said law, Public Laws of 1977, Chapter 211, was signed into law on May 25, 1977.)

In view of the enactment of P.L. of 1977, chapter 211, most of the questions set forth in your memo, have been rendered moot. Chapter 211 of the Public Laws of 1977 provides, in essence, that unless the petition and ballot expressly provide otherwise, a vote from "wet" to "dry" in a given municipality, will mandate a surrender of all existing licenses in said municipality on the first day of the month following certification of the vote by the Office of Secretary of State.

The Speaker of the Maine House of Representatives, John L. Martin, has only recently informed this Office that at least one of the licensees in Smyrna Mills is indeed desirous of a return of his license, however, if such a procedure is legally possible.

Although the question as to the continuation or termination of licensure is not free from doubt under the language of our existing local option statutes, it was, and remains my opinion, that an existing license is not terminated per se upon the conduct of an election which results in a change in status from "wet" to "dry."

There is no question that the Legislature can provide for the automatic revocation or termination of licensure as a result of a negative local option vote, because a license to sell alcoholic beverages is distinctly a privilege rather than a property or contractural right. The sole question is simply whether or not the language of our local option law dictates such a termination.

> "Liquor licenses are not contracts, and create no vested rights, but are simply temporary permits which are subject to revocation by the power authorizing their issuance, and licensees in local option territory may be deprived of their right to sell by an adverse vote on the liquor question. The fact that licensees are thereby deprived of the use of their bar fixtures for the sale of liquors does not deprive them of their property without due process of law, although the fixtures are useless for other purposes.
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> 'Sometimes local option legislation is construed so as not to void any outstanding licenses prior to their expiration date when a territory adopts a dry status, although no licenses may be issued after such election.'" (emphasis supplied) 45 Am. Jur. 2d (Intoxicating Liquors) § 109, p. 565

The Idaho Court in interpreting a local option statute which no longer contained any saving clause in regard to existing licenses, held none-the-less that a negative local option vote would not void existing licenses, but would only prohibit the issuance of new licenses and renewal of existing licenses.

> "The Legislature did not intend by the local option law that a negative local option election should operate to void any outstanding liquor license prior to their expiration date, but only that no licenses could issue after any such local option election, except where sanctioned by a majority vote at later election, and therefore liquor licenses issued for year beginning January 1, 1950, remained in full force and effect until date of expiration, notwithstanding that voters of city voted in negative in local option election on March 14, 1950." Nampa Lodge No. 1389, ETC. v. Smylie, 71 Idaho 212, 229 P.2d 991 (1951)

The Idaho Court in Smylie reasoned that if it were the intent of the legislature to void or terminate existing licenses as of the date of any negative election, it is reasonable to assume that it would have expressly provided therefore, and further, that it would also have made provision for refund of the unearned portion of outstanding licenses.

In fairness, it should be pointed out that there was a dissent in the Smylie decision which held unequivocally that since the Idaho legislature in 1947 did not retain a saving clause (in regard to existing licenses) which was set forth in a previous statute (1909), that the legislature intended that outstanding licenses should terminate immediately, upon the conclusion of a negative vote.

The decision in Smylie graphically illustrates the difficulty in determining license termination dates in the absence of an express statutory declaration delineating same. This particular decision does represent solid authority, however, for the principle that existing licenses shall expire on their date of renewal, in the absence of an express statutory prescription to the contrary.

SUMMARY

In no manner should this opinion be interpreted as a condemnation of the Bureau of Liquor Enforcement's decision to seek immediate return of the licenses in question. In the event of litigation, it cannot be indisputably stated that a Court would adopt this advisory opinion. In view of the probability of a court decision in harmony with this opinion, however, I would personally recommend a return of the licenses to the licensees for the duration of their original grant of licensure. (It is my understanding that two of the said licenses have expired, but that the third license in question, will not expire until February 17, 1978.)

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