

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

*Restaurants Regulation
w/ Phosiphil "Eating Establishment"
22 MRSA 2491(7)*

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

September 14, 1977

Donald C. Hoxie, Director
Bureau of Health Engineering
Department of Human Services
221 State Street
Augusta, Maine 04333

Re: Definition of Eating Establishment

Dear Mr. Hoxie:

On September 1, 1977, you requested an opinion as to whether or not the Department of Human Services was responsible for the licensure of an eating establishment if food was not served to the public for consumption on the premises. My answer to your question is that the State of Maine Department of Human Services may license an eating establishment regardless of whether the food is consumed on or off the premises.

The controlling statute in the present situation is 22 MRSA Sec. 2491, et seq., enacted by the 107th Legislature in 1975. An examination into the legislative history of the above law does not disclose any useful information pertaining to the question posed. Several amendments were offered to this bill, and one amendment was adopted without debate. The latter amendment did not concern itself with your question.

22 MRSA 2491(7) defines "Eating Establishment" as "any place where food or drink is prepared and served, or served to the public for consumption on the premises,..." Examples are listed in the same section which clarify the above definition by including therein, inter alia, mobile eating places, road-side stands, stores, parks, theaters. Exceptions are enumerated in 22 MRSA section 2501. Stores or other establishments are exempt from the licensing provisions only where bottled soft drinks or ice cream are sold for consumption from the original containers only, and where no tables, chairs, etc. are provided. There is no exemption listed for eating establishments that prepare and serve food or drink for consumption off of the premises.

Donald C. Hoxie
September 14, 1977
Page 2

Therefore, if food or drink is prepared and served to the public for consumption and for compensation, regardless of where the food or drink is to be consumed, the site constitutes an eating establishment and is within the province of the Department of Human Services' licensing powers.

Very truly yours,

James Eastman Smith
James Eastman Smith
Assistant Attorney General

JES:mm