

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date January 3, 1978

Stanley Browne

Dept. Agriculture

From Sarah Redfield, Assistant

Dept. Attorney General

Subject _____

This is in response to your request of November 4, 1977, regarding proposed procedures for the Channel 10 sale of pets and livestock during their annual fund-raising auction. Specifically, you have asked whether a permit to conduct a livestock auction, the use of a licensed livestock auctioneer, and/or the auctioning of gift certificates for certain pets or merchandise is lawful in view of the provisions of Title 17 M.R.S.A. § 1058. As discussed herein, none of these proposition would be in compliance with this statute.

Title 17 M.R.S.A. § 1058 makes it unlawful to "sell, offer for sale, give away or raffle any live animal, fowl or reptile as a fund-raising device." The term "fund-raising device" has been construed in a prior opinion of this office to mean money-raising activities of non-profit organizations, as opposed to business or commercial ventures, see Opinion from David Roseman to you dated January 13, 1976.

The more general provisions regarding auctions of animals appear in Title 7 M.R.S.A. § 1451 et seq. and regarding licensure of auctioneers in Title 32 M.R.S.A. § 251 et seq. These statutes provide for licensing of auctioneers by the Secretary of State and for permits for animal auctions to be issued by the Commissioner of Agriculture. Animal auctions are defined as "any place where cattle are offered for private or public auction, the health status of which has been previously checked and approved by the Commission."


It is an established principal of statutory construction that statutes on the same subject are to be construed in harmony with each other. See generally, Cram v. Inhabitants of Cumberland County, 96 A.2d 839, 149 Me. 515, Finks v. Maine State Highway Commission, 328 A.2d 791 (1974). It is also a principle of statutory construction that where there are two statutes on a subject the specific controls over the general, and the later enactment over the former. See generally, e.g. Beckett v. Roderick, 251 A.2d 427, (1969), Opinion of the Justices, 311 A.2d 103 (1973).

With these principles in mind, it appears that a licensed auctioneer would be required for any auction and that his/her presence would not validate an otherwise inappropriate auction, see 32 M.R.S.A. § 251, cf. 17 M.R.S.A. § 1058. Similarly, a permit from the Commissioner of Agriculture would be required for any auction of cattle, but would not validate an otherwise inappropriate auction thereof and certainly could not extend beyond livestock as defined by statute, see 7 M.R.S.A. § 1451 cf. 17 M.R.S.A. § 1058. In this case, the provision as to fundraising, being both the later and the more specific limitation would control if any conflict exists.

Stanley Browne
Page 2
January 3, 1978

Accordingly, attainment of a livestock auction permit and/or use of a licensed auctioneer would not serve to validate a fund-raising auction of cattle or other animals.

The third alternative seems to be merely an attempt to accomplish indirectly that which the law precludes accomplishing directly. The sale of a gift certificate for a certain pet is subject to the same concerns and prohibitions as the sale of the pet itself; it would be a fundraising device for the raffling of an animal and thus prohibited by § 1058.



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Assistant Attorney General

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