

MAINE STATE LEGISLATURE

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*Re: The Bill. Application to Ships
32 M.R.S.A. § 1863*

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

January 11, 1978

Honorable Rodney S. Quinn
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Quinn:

This is in response to your memorandum of December 22, 1977, in which you requested an opinion as to whether beverage containers sold to the purser of ships docked in Maine are subject to the refund provisions of Title 32 M.R.S.A. § 1863. As discussed herein, such pursers, as described by you, are not within the definition of consumers and accordingly sales to such persons are not covered by § 1863.

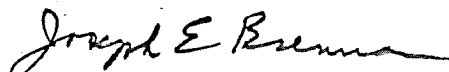
Section 1863 provides in pertinent part that "Every beverage container sold or offered for sale to a consumer in this State shall have a refund value," such value to be 5¢ or a greater amount as determined by the manufacturer. "Consumer" is defined as "an individual who purchases a beverage in a beverage container for use or consumption," which is in turn defined as "the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale, storage, or retention for the purpose of sale of a beverage," 32 M.R.S.A. § 1862.4 and § 1862.13, respectively. The definition of "consumption" is contrasted with that of dealer which is defined as "a person who sells, offers to sell or engages in the sale of beverages in beverage containers to a consumer. . . ." There is a specific exemption for beverage containers sold to an airline for use on international flights, 32 M.R.S.A. § 1870, as enacted by P.L. 1977, c. 381, § 2.

The facts which you suggest in your memorandum would indicate that the sale to the ship's purser would be a dealer-to-dealer transaction, not addressed by the prohibitory language of § 1863; however, the purser, as a dealer, would then be obligated to sell the beverages in containers with a refund value when sold to a consumer "in this State."

"In this State" is defined by statute to mean "within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America," 32 M.R.S.A. § 1862-8. Title 1 M.R.S.A. § 2 provides that the State's jurisdiction as to offshore waters and submerged lands includes the "marginal sea to its outermost limits as said limits may from time to time be defined or recognized by the United States of America by international treaty or otherwise" and the "high seas" to the extent the United States claims jurisdiction. The exterior limit of the State's sovereignty in the territory in the Atlantic Ocean has been found by the court to be three geographical miles seaward from the ordinary low water mark and from the outer limits of inland waters on the coast, see generally United States v. Maine, 95 S.Ct. 1155 (1975).* The fact that the Legislature enacted an exception for airlines is not inconsistent with this conclusion inasmuch as such an exemption may have been necessary due to the nature of the airline's transfer of beverages to consumers within the State, not as a sale, see 32 M.R.S.A. § 1870, as enacted by P.L. 1977, c. 381, § 2; 1 M.R.S.A. § 6.

I hope this information is helpful.

Sincerely yours,


JOSEPH E. BRENNAN
Attorney General

JEB/ec

* The United States claims jurisdiction to 200 miles for fisheries management. As a result, the State may be able to exercise jurisdiction over persons and ships subject to its control to the 200 mile limit. However, 32 M.R.S.A. § 1862-8 appears to address the question of control in territorial rather than jurisdictional terms, therefore, the three mile limit is the appropriate territorial limit for application of 32 M.R.S.A. § 1863.