

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 24, 1978

To Robert Clark

Dept. Agriculture

From Sarah Redfield, Assistant

Dept. Attorney General

Subject Bottle Bill

This is in response to your request of April 11, 1978, for an opinion of the Attorney General as to whether the Department of Agriculture may, consistent with Title 32 M.R.S.A. C. 28 (hereinafter sometimes referred to as the "bottle bill") limit, by regulation, the hours during which stores must accept returnable beverage containers and/or the number of such containers which can be returned at one time. The Department of Agriculture does not have the authority to so act.

Title 32 a.R.S.A. § 1871 provides that the Department of Agriculture shall, in accordance with the Administrative Code, adopt, amend or repeal "such reasonable rules and regulations as it deems necessary to carry out and interpret the provisions, purposes and intent of this chapter." In adopting administrative regulations, an agency does not have uncontrolled discretion, but is limited by the policy and purpose set out by the Legislature. See e.g. Small v. Board of Registration & Examination in Optometry, 283 A.2d 786 (Me., 1972). Title 32 M.R.S.A. § 1866 specifically provides that,

"Except as provided in this section, a dealer shall not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by the dealer" (emphasis supplied)

The exceptions provided in this section are for operators of vending machines who are not required to accept returnable containers on the premises where the vending machine is located, and for dealers whose place of business is within the jurisdiction of a local redemption center approved by the Department of Agriculture. See Title 32 M.R.S.A. § 1866.1 and § 1866.2, respectively. No other exceptions are specified by statute.

It appears from the legislative history that at one point the Legislature considered making dealer acceptance discretionary. See L.D. 2315 of the 1st Special Session of the 107th Legislature, at section 1866.1; compare § 1866.1 as enacted. It also appears that the Legislature was aware of the potential problems for small stores. See, e.g. testimony of Representative Laffin, Legislative Record, 1975, at B 1149-50. In view of the Legislature's actions, it does

not appear appropriate for the Department to enlarge the areas in which a permissive refusal by a dealer will be acceptable.

In this regard, you have, in conjunction with your opinion request, provided me with a copy of the rules and regulations of the Environmental Protection Division of the State of Vermont, which rules and regulations apparently provide that retailers may establish hours for the redemption of beverage containers pursuant to Vermont's equivalent of the Maine bottle bill.

The returnable beverage container legislation of the State of Maine was substantially patterned after that of the State of Vermont. Compare 32 M.R.S.A. §§1861, et seq. with 10 V.S.A. §§ 1521, et seq. Where a state adopts a statute of another jurisdiction, it is generally appropriate to construe the statute with reference and in relationship to the construction of statute of the jurisdiction where it was originally enacted. See, e.g., Sutherland, Statutory Construction, c. 52. The Vermont legislation provides that "a retailer shall not refuse to accept from any person any empty beverage containers of the kind, size and brand sold by the retailer. . . ." The Vermont statute also provides for exceptions for a retailer in an area within the jurisdiction of a redemption center. However, in addition to these provisions, which are very similar to those of the State of Maine, the Vermont statute, requiring mandatory acceptance of beverage containers by dealers, has an explicit exception "as provided in section 1522." Title 10 V.S.A. § 1522 provides, in pertinent part that,

"The secretary shall prepare and print suitable posters for sale, at cost, to persons who wish to post the hours during which containers will be redeemed at their places of business. Containers shall be redeemed during no fewer than 40 hours per week during the regular operating hours of the establishment. The posters shall be substantially in the following form: (example of appropriate notice as to hours indicated in the statute)."

Inasmuch as the Maine statute tracks the Vermont statute in many ways, the failure of the Maine Legislature to include an exception such as that specifically indicated in the Vermont statute, indicates that it was not the intention of the Maine Legislature that such limitations be allowed. Accordingly, it is not within the statutory authority of the Department of Agriculture to add by regulation an exception not provided by statute.



SARAH REDFIELD
Assistant Attorney General

SR:mfe
cc: Clayton Davis
Joseph N. Williams