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Bottle Bill's Obligations of D. (Knox)
32 M.R.S.A. 1868

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April 25, 1978

To: Robert Clark, Department of Agriculture
From: Sarah Redfield, Assistant Attorney General
Re: Bottle Bill

This is in response to your oral request for enforcement action to be instituted against Knox Distributors of Rockland, Maine, for alleged violations of Title 32 M.R.S.A. § 28 (hereinafter sometimes referred to as the "bottle bill"). The material which you submitted in conjunction with this request indicates that Knox Distributors apparently sold containers without labels as to refund value and cans with flip-top openings to various retail stores. For the reasons discussed herein, I do not intend, as a matter of prosecutorial discretion, to proceed with any enforcement action against Knox Distributors in the present case. Please be advised that this memorandum is limited to the alleged violation by Knox Distributors of Sections 1868 and 1863 of the bottle bill and the factual data supplied to us; it is not meant to indicate any finding as to any other possible factual context or other possible illegal conduct by beverage distributors.

Title 32 M.R.S.A. § 1869 provides that a violation of the Maine laws concerning beverage containers shall be a civil violation for which a forfeiture of not more than \$100 may be adjudged. Title 32 M.R.S.A. § 1868 provides, in pertinent part, that

"No beverage container shall be sold or offered for sale to consumers in the State: (emphasis supplied)

"1. Flip-tops. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener;"

Title 32 M.R.S.A. § 1863 provides that:

"Every beverage container sold or offered for sale to a consumer in this State shall have a refund value." (emphasis supplied)

Title 32 M.R.S.A. § 1865 indicates that this refund value shall

"be clearly indicated on every refundable beverage container sold or offered for sale by a dealer in this State."

The term "consumer" is defined by Title 32 M.R.S.A. § 1862.4 to mean "an individual who purchases a beverage in a beverage container for use or consumption."

The term "use or consumption" is also defined by Title 32 M.R.S.A. § 1862.13 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." (emphasis supplied)

In construing a statute, the basic principle is that where the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation or to impose other meanings on the terms of the statute. See, e.g., State v. Granville, 336 A.2d 861 (Me., 1975). In addition, the Courts of the State have consistently held that nothing in the statute is to be considered as "surplusage" if a reasonable construction supplying meaning and force to the terms is possible. See, e.g., Finks v. Maine State Highway Commission, 328 A.2d 791, 799 (Me., 1974).

Applying these general principles to the provisions of the bottle bill indicates that the use of the language emphasized in the above quotations places legal significance at the point of sale to the consumer as defined. While there is some ambiguity in that sales by distributors are, ultimately, for consumers, it appears that transactions occur at the level of dealer-consumer transactions involving containers not properly labeled or containers with flip-top openings. This appears to be the more natural meaning of these sections. Where there is no manifest legislative intent otherwise, statutes are to be read according to the natural import of the terms used, without resorting to forced constructions for the purpose of either limiting or extending their operation. See, generally, In Re Belgrade Shores, Inc., 359 A.2d 59 (Me., 1976). In this regard, I was unable to find any legislative history which would document an interpretation placing the legal obligation on the distributor. (See, e.g., Legislative Documents Nos. 2315 and 2250 submitted and rejected by the 107th Legislature, which proposals would have placed the burdens of compliance with the law more directly on the distributor.)

Accordingly, although the sale of beverage containers by a distributor to a dealer is, as previously noted, presumably, in the final analysis, for the purpose of selling or offering to sell such containers to a consumer, such a reading of the prohibitory language of the bottle bill appears rather indirect; accordingly, I am unwilling, in the exercise of the State's prosecutorial discretion, to proceed in this matter at this time as you have requested.

Sarah Redfield

SARAH REDFIELD
Assistant Attorney General

SR/ec

cc: Joe Williams