Bottle Bill Restrictions Handling Charge
32 MRSA, 1866.4

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 2, 1978

To: Robert Clark, Division of Inspections, Department of Agriculture

From: Sarah Redfield, Assistant Attorney General

Re: Returnable Beverage Containers, Distributor Handling Charges

This is in response to your memorandum of February 2, 1978, in which you ask the opinion of this office as to whether it is legal for beverage distributors to sell to dealers, for six cents deposit stickers requiring a five cent deposit. It is my understanding from your memorandum, from my conversation with Robert Solman of Solman Distributors of Caribou, Maine, and from the letter from the various Aroostook County distributors (a copy of which is attached), that it was the practice of some distributors to provide such deposit stickers to be placed on beverage containers already in retail stores on the effective date of the bottle bill, which containers did not bear the necessary refundable label. The distributors charged the dealers six cents for stickers indicating a five cent deposit. It is my further understanding that other distributors now charge dealers the additional one cent per returned container contemplated by 32 M.R.S.A. § 1866.4 when initially billing the dealers for the full beverage containers. In the latter situation, it is my understanding that, at least in some cases, the charging of this one cent has been explicitly and separately described as a charge for this handling charge.

The question presented does not lend itself to simple analysis. On the one hand, it would seem that relationships among manufacturers, distributors, dealers and consumers are most properly determined in the private sector without governmental regulation.* On the other

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* In this regard, please refer to the opinion of this date from me to Clayton Davis concerning "handling charges" imposed on the distributor by the manufacturer.

hand, the Legislature of the State of Maine has seen fit to enact legislation governing these relationships to some extent. As discussed herein, while the question is not entirely free from doubt, it appears that the Legislature did not intend the bottle bill to proscribe the charges described above, and that the practice you have brought to our attention is not unlawful pursuant to Title 32 M.R.S.A., c. 28.

The legislative history of the bottle bill indicates that several alternative approaches to container regulation were considered. In the Regular Session of the 107th Legislature, legislation was introduced as L.D. 1889, which legislation stated as its purpose the following:

> "It is the intent of this new draft to provide for consideration by the Legislature and by the people of Maine of a Returnable Beverage Container Act which if enacted would allow normal economic considerations to determine its implementation."

In debate on the various proposals for legislation concerning returnable containers, Representative DeVane described L.D. 1889 as follows:

> "L.D. 1889 is what I would term a bare bones bill, a bare bones approach requiring returnable containers. It defines less, but it prohibits the same thing, believing that that which governs best governs least and believing that the economy, the matter of being able to make a living would determine who does what and it is best that that happened that way."

The bill itself prohibited <u>any</u> person from selling or offering to sell any beverage in a beverage container except as that word was defined by § 1862 of the bill. In turn, § 1862 provided that "beverage container" would mean

> "a glass or plastic bottle, jar or other container which has been sealed by a manufacturer and which, at the time of sale, contains one gallon or less of a beverage and which can be returned for deposit and refilled for reuse five or more times or a metal can which has been sealed by a manufacturer and which at the time of sale contains one gallon or less of a beverage and which can be recycled and shall be returnable for a deposit of 3 cents or more."

No further allocation of responsibility or liability was included.

L.D. 1889 was not enacted in the 107th Legislature. The Legislative Document which came closest to enactment in that Session was L.D. 1888. This bill is similar in form to that which is currently the law of the State of Maine. L.D. 1888 provided in the section then numbered 1865.3 that

> "In addition to payment of the refund value of a beverage container, a dealer or person operating a redemption center under section 1866 who redeems beverage containers shall be reimbursed by the distributor of such beverage containers in an amount which is at least one cent per container."

This was the first time a provision for reimbursement by a distributor was included in the various documents submitted to regulate returnable beverage containers. Cf. L.D. 1289 of the 105th Legislature; L.D. 12 and L.D. 1913 of the 107th Regular Session. This provision remained in substantially the same form in subsequent drafts of the bill. See, e.g., L.D. 2315 of the Special Session of the 107th Legislature, § 1866.3; L.D. 2248, Special Session of the 107th Legislature, § 1867.5; L.D. 2249, Special Session of the 107th Legislature, § 1867.5.

The Legislature rejected the option of leaving the financial procedures of the bottle bill entirely to the private sector for determination. Instead, the Legislature established a minimum deposit of five cents and left to the manufacturer the actual fixing of the refund value beyond this amount. See 32 M.R.S.A. § 1863. The Legislature also enacted a provision establishing a handling charge of one cent per returned container. As finally enacted, this provision provides as follows:

> "In addition to the payment of the refund value, the distributor shall reimburse the dealer or local redemption center for the cost of handling beverage containers, in an amount which equals at least one cent per returned container," 32 M.R.S.A. § 1866.4.

This section establishes a mandatory payment by the distributor to the dealer or redemption center for each returned container; however, the statute is silent as to whether or not this one cent could or should have been passed on to the dealer by the distributor. Based on the statutory analysis discussed herein, without a specific prohibition or more precise legislative statement in this regard, the statute may not properly be construed to make unlawful the approach used by distributors as described in your memorandum.

The basic principles of statutory construction establish that the Legislature is presumed not to have undertaken a meaningless act, that the intent of the Legislature is of primary importance, that no section or word of a statute is to be considered as surplusage, and that the Legislature is presumed to have acted in a manner which is constitutional. See, e.g., generally, State v. Granville, 336 A.2d 861 (Me., 1975), Finks v. Maine State Highway Commission, 328 A.2d 791 (Me., 1974) and In re Spring Valley Development, 300 A.2d 736 (Me., 1973).

While the inclusion of the provision for reimbursement for the cost of handling may be read to be a legislative determination that the cost of handling be borne by the distributor, this interpretation does not appear appropriate in view of these principles of statutory construction. It is clear that the Legislature did not intend that the bottle bill fix or regulate the price of beverages. See 32 M.R.S.A. § 1861. So long as this is the case, the reimbursement for the "cost of handling" contemplated by § 1866.4 could lawfully be incorporated as part of the cost and/or profit at any point in the distribution process. It is only because of the distributor's labelling the one cent as a separate figure attributable to § 1866.4 of the bottle bill that this matter comes to our attention at all. The enactment by the Legislature of § 1866.4 would be a meaningless effort to fix a charge on the distributor so long as the distributor remains able to freely set prices at all.

The interpretation of § 1866.4 which would prohibit the distributors from charging the one cent to the dealers is therefore not supported by the standard presumptions of statutory construction as to meaningful legislative intent. At the same time, to say that § 1866.4 does not prohibit a distributor from charging a dealer the one cent per container handling charge is not to say that the section is mere surplusage. The section is necessary to address the situation where a person returns bottles to a local redemption center and not to the dealer from whom the bottles were purchased. In this case, the Legislature has determined that a one cent payment be made to the local redemption center.

In conclusion, in view of the legislative history of the enactment of the bottle bill and the apparent applicability of the various accepted principles of statutory construction, it appears that the practice described in your memorandum and communication from Solman Distributors of charging a dealer six cents for a five cents deposit sticker, where one cent is apparently intended to reimburse the distributor for the one cent payment contemplated by § 1866.4, is not made unlawful by the bottle bill. Similarly, distributors who are charging this one cent to dealers as compensation for the one cent provided for in § 1866.4 are not acting in violation of this section of the bottle bill.

Sarah Redfield

SARAH REDFIELD
Assistant Attorney General

SR/ec

SOLMAN DISTRIBUTORS, INC.
WHOLESALER

59 YORK STREET • CARIBOU, MAINE 04736

WHOLESALER: BUDWEISER® / MICHELOB®

February 1,1978

Attorney General's Office
Mrs. Sarah Redfield
State House
Augusta,Maine 04330

Ref: 5 cent deposit stickers

Dear Mrs Redfield,

With reference to our phone conversation regarding the charge 6¢ for deposit stickers. We, the undersigned wholesalers agree to refund all retailers one cent per sticker pending the Attorney Genersl's Office decision.

Signed:

Solman Distributors,Inc. Robert Solman

Anderson Beverage Co. Richard Anderson

County Beverage Co.

Aroostook Beverage Co.

Phone: 493-3389 — 493-3380