Liquor Rules Gambling
Gambling: Liquor Rules
28 MRSA § 851
28 MRSA § 53

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To: Keith H. Ingraham, Director
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From: Stephen C. Clarkin, Asst. Atty. Gen.
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Subject: Gaming Devices on the Premises of Liquor Licensees

FACTS:

On March 28, 1978, the State Liquor Commission amended Rule 5 of its Rules and Regulations to read as follows:

> "Rule 5. No licensee shall have or permit on his licensed premises any gaming devices, sealed tickets, punchboard or any mechanism which dispenses money or other valuable thing which is redeemable or exchangeable for money or other valuable thing, other than in non-profit clubs. Free replays shall not be considered a thing of value." (Emphasis Added)

Generally, the regulation of games of chance and gaming devices is governed by 17 M.R.S.A. Chapter 14, § 330-346. Under 17 M.R.S.A. § 343, the Chief of the State Police is vested with the authority to promulgate rules and regulations relating to the enforcement and administration of the State's gambling laws and for the licensing and operation of games of chance. Neither the statute nor the regulations adopted thereunder contain any restriction relating to the location of games of chance.

QUESTION PRESENTED:

Whether the State Liquor Commission has the authority to prohibit, by regulation, the placement or use of gaming devices on the premises of liquor licensees.

ANSWER:

The State Liquor Commission has no authority to prohibit the placement or use of gaming devices on the premises of liquor licensees.

REASONING:

Pursuant to 28 M.R.S.A. Sec. 53, the Legislature has conferred upon the State Liquor Commission the authority to adopt rules and regulations relating to the sale of liquor and to the administration, clarification and enforcement of all statutes pertaining to liquor. This delegation of authority, however, is limited by the terms of the enabling statute. It is not tantamount to the power to legislate; it is a grant of power merely to implement, by regulation, the will of the Legislature as manifested in the liquor laws. As stated by the Maine Supreme Court in Anheuser-Busch, Inc., Et Al. v. Walton Et Al., 135 Me. 57, 67 (1937), a decision which delineated the scope of the Commission's regulatory authority: "Its power to make rules and regulations extends only to such details of administration as are necessary to carry out and enforce the mandate of the legislature." For such an exercise of regulatory authority to be valid, therefore, it must be authorized by the controlling statutes, either expressly or by reasonable implication. Id. There is nothing in the statutes which suggests, even remotely, that the Commission has been empowered to proscribe the use of gaming devices which, in the absence of such a regulation, would be otherwise lawful.

Nor may such authority be inferred from 28 M.R.S.A. § 851. That section provides as follows:

> § 851 Certain clubs ineligible
>
> "Clubs operated unlawfully or for another's profit shall not be licensed. A club spiritous and vinous liquor license shall not be granted to any group of persons, incorporated, which is organized or operated for the following objects and purposes:
>
> 1. Gambling. For gambling or other illegitimate purposes.
>
> 2. Profits to one other than applicant. For the sale of spiritous and vinous liquors, the profits from which accrue to an individual or corporation other than the applicant."

It is evident from the language of that section that its operation is confined to unlawful gambling activity and that it is inapplicable to lawful gambling activity.

The regulation in question, moreover, cannot be reconciled with the statutes regulating games of chance and gaming devices. First, even a cursory examination of 17 M.R.S.A. §§330-346 indicates that the Legislature intended thereby to fully regulate the subject of games of chance. It would be wholly incongruous to conclude that the Legislature contemplated further regulation of games of chance by an administrative agency with no statutory authority over the subject. Secondly, these provisions authorize certain non-profit organizations to operate and conduct games of chance provided that they are properly licensed by the Maine State Police. With one exception not pertinent here, no restriction is imposed on the location of licensed games. 17 M.R.S.A. § 332(4). The significance of this omission becomes readily apparent upon review of the legislative history of the statute.

In January of 1977, certain amendments to the State's existing gambling laws were presented to the legislature for consideration. One of the proposed amendments purported to confine the location of games to the premises of the licensee, i.e., the place where the non-profit organization ordinarily conducts meetings, and to prohibit the operation of games of chance in any ". . . hotel, motel, restaurant, bar or tavern open to the general public." L.D. 110 This restrictive language, however, did not survive in the Senate. A new draft was adopted which deleted all such restrictions. L.D. 1846 It was the latter draft which was passed and enacted into law. As the statement of fact indicates, this deletion was intentional: "This new draft . . . removes the restriction on where a game of chance may be conducted."

It is evident, therefore, that the Legislature not only considered the issue but also emphatically rejected any restrictions on location. To approve the Commission's efforts to circumvent, by regulation, this clear manifestation of legislative intent would countenance a usurpation of legislative authority.

Accordingly, as the State Liquor Commission lacks the authority to prohibit the placement of gaming devices on the premises of liquor licensees, it is clear that Rule 5 is of no validity.

Sincerely,

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