

MAINE STATE LEGISLATURE

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Liquor Closing State Stores
Agency Stores
28 MAY 1978

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

June 21, 1978

The Honorable Walter A. Birt
33 Pine Street
East Millinocket, Maine 04430

Re: Closing of State Liquor Stores and Replacing them with
Agency Stores - Opinion Request of May 25, 1978

Dear Representative Birt:

The Attorney General has requested that I reply to your
May 25, 1978 letter in which letter you informed the Attorney
General that the Director of Alcoholic Beverages, Keith
Ingraham, had informed you that it is the decision of the
Liquor Commission to close a group of state stores, to be
replaced by agency stores.

You also provided the Attorney General with a copy of a
letter dated May 1, 1978 from Mr. Ingraham to you in which
Mr. Ingraham explains the basis for the Liquor Commission's
considering the closing of the liquor store in Patten and the
replacing of that store with an agency store if feasible.

You have asked for an opinion to the following

QUESTION:

Whether the Director of Alcoholic Beverages, with the
consent of the Commissioner, has the right to close stores with
the intent to institute agency stores?

ANSWER:

The State Liquor Commission has the authority to close a
State Liquor Store and replace it with an agency store.

REASONS:

On June 9, 1976, John P. O'Sullivan, Commissioner of the
State of Maine Department of Finance and Administration, posed
the following question to the Attorney General:

"Does the legislative intent of 28 M.R.S.A. § 153 prohibit the State Liquor Commission from closing a State Liquor Store and replacing it with an agency store, where the Commission deems it appropriate?"

The Attorney General replied to the Finance Commissioner by means of an Inter-Departmental Memorandum dated June 10, 1976, a copy of which is enclosed. The memorandum states, inter-alia, "In our view, 28 M.R.S.A. § 153 does not prohibit the State Liquor Commission from closing a State Liquor Store and replacing it with an agency store."

It is clear from this memorandum that an agency store cannot be opened and operated where a state liquor store exists. However, should the state liquor store be closed first, the State Liquor Commission has the authority to substitute an agency store in its place.

I have reviewed statutory changes in the Maine Liquor Laws subsequent to the issuance of the memorandum and find no basis for changing the opinion of this office contained in the memorandum.

I trust the foregoing is of assistance to you.

Respectfully,

Jerome S. Matus
Assistant Attorney General

JSM:gr

Inter-Departmental Memorandum Date June 10, 1976

To John P. O'Sullivan, Commissioner Dept. Finance and Administration
From Joseph E. Brennan Dept. Attorney General
Subject Closing of State Liquor Stores

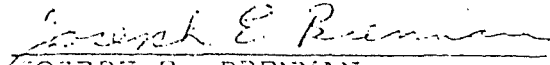
This responds to your request for an opinion dated June 9, 1976, in which you posed the question:

"Does the legislative intent of 28 M.R.S.A. § 153 prohibit the State Liquor Commission from closing a State Liquor Store and replacing it with an agency store, where the Commission deems it appropriate?"

In our view, 28 M.R.S.A. § 153 does not prohibit the State Liquor Commission from closing a State Liquor Store and replacing it with an agency store.

The relevant provisions of law are stated in 28 M.R.S.A. § 153. This section was last amended by P.L. 1975, Chapter 770, § 135 (effective July 30, 1976). As this opinion is for future effect, this latest amendment is discussed. However, this opinion would be no different were it an interpretation of existing law. Section 153 grants the State Liquor Commission authority to license and regulate agency stores in cities, towns and unorganized territories "where there are no state stores." Thus, an agency store could not be opened and operated where a State store existed. However, if a State store were closed first and then an agency store opened, there would be no State store at the time of opening of the agency store and the statute would be complied with.

This interpretation of legislative intent is confirmed by the fact that during the most recent special session of the Legislature, the Legislature approved and sent to the Governor L.D. 1964 which specifically addressed closing of State liquor stores. The purposes for which closings were allowed under L.D. 1964 were related to such matters as moving a store from one location to another and failure of a store to generate adequate revenues for operation. The purposes did not include substitution of an agency store. L.D. 1964, although adopted by the Legislature, has not been signed by the Governor. Therefore, it did not become law and the fact that it did not become law confirms the interpretation of the statute that without it, State stores may be closed for the purpose of substituting agency stores.


JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Honorable Joseph Sewall
Honorable John L. Martin

STATE OF MAINE

Inter-Departmental Memorandum Date May 26, 1978

To Jerry Matus, Asst. Atty. Gen.

Dept. Taxation

From Donald Alexander, Deputy

Dept. Attorney General

Subject Opinion Request from Representative Walter A. Birt

Attached is an opinion request we have received from Walter A. Birt relating to actions of the Bureau of Alcoholic Beverages in closing stores and replacing them with agency stores. Could you please prepare a response.

DGA/ec

Enc.



STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333

East Millinocket, Me.
May 25, 1978

Hon Joseph Brennan
Attorney General
State House
Augusta, Maine

Dear Joe:

The Director of Alcoholic Beverages, Keith Ingraham, has informed me that it is the decision of the Commission to close a group of state stores, to be replaced by agency stores.

The legislation authorizing these agency stores Title 28 sec 153 was intended to allow those stores to be operated in areas where there is not a state liquor store. Generally the intent was to locate those stores in smaller communities quite some distance from a state liquor store.

The legislature in a related circumstance has on several occasions refused to pass legislation allowing fortified wines in grocery stores. This should indicate that the legislature likely meant to have the sale of intoxicating liquors confined to state liquor stores.

I would appreciate an opinion as to whether the Director of Alcoholic Beverages, with the consent of the Commission, has the right to close stores with the intent to institute agency stores.

I am enclosing one of the letters which I have received from the Director of Alcoholic Beverages

Sincerely

Walter A. Bart
Walter A. Bart
Representative

STATE OF MAINE

Bureau of Alcoholic Beverages

A DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION



KEITH H. INGRAHAM, DIRECTOR
207-289-3721

MAILING ADDRESS: STATE
HOUSE, AUGUSTA, MAINE 04330
LOCATED AT 10-12 WATER STREET,
HALLOWELL, MAINE 04347

May 1, 1978

The Honorable Walter A. Birt
33 Pine Street
East Millinocket, Maine 04430

Dear Representative Birt:

L.D. 2122, Chapter 667, Public Laws of 1978, as passed in the Second Regular Session will become law on July 6. This is AN ACT to Clarify the Status of Intermittent State Employees.

This legislation will now prohibit the use of part-time employees as the Liquor Commission has been accustomed under prior law. Due to the nature of our business and the geographical location of our liquor stores, we find that this law necessitates a decision either to close our one- and two-man stores for extended periods of time in the event of illness or vacations, or to establish an agency store which would allow the sale of alcoholic beverages in a community from 9:00 a.m. to 12 midnight.

There are several one- and two-man operations which, if closed and replaced by agency operations, we feel would provide better service to the general public given the passage of L.D. 2122. We are able at this time, due to retirements and expiration of leases, to phase out these liquor stores with the least amount of employee disruption.

The liquor store in PATTEN is being considered for closing and would be replaced by an agency store if feasible.

The Liquor Commission will be meeting May 23 in Augusta and would appreciate your comments regarding this matter prior to the meeting.

Very truly yours,

A handwritten signature in cursive script that reads "Keith H. Ingraham".

Keith H. Ingraham
Director

KHI:cas

Thereupon, the Bill was passed to be engrossed in concurrence.

The following Communication:
State of Maine
Office of the Governor
Augusta, Maine

June 11, 1976

To: Members of the House of Representatives and Senate of the 107th Legislature

I am returning H. P. 1805, L. D. 1964, "An Act Relating to Location of State Liquor Stores" without my signature and approval.

While I do not pretend to be an expert in either liquor sales or administration, I feel that my record on fiscal responsibility and cost conscious government, justifies my veto of this legislation because of the immediate loss of savings of up to \$225,000 and untold thousands of dollars of additional rental increases that could be incurred to the State as a result of this bill.

The legislation mandates poor business and management practices by tying the hands of the Maine State Liquor Commission regarding the closing of existing State liquor stores. This legislation states that "In no event shall the Bureau close an existing State store unless the net operating costs of existing State stores exceeded 15% of its gross revenue."

Agency stores, authorized by the Regular Session of this Legislature, carry an operating cost of 8%. It is simply good management practices to run a store at a cost of 8%, rather than a higher cost of up to 15%.

However, I am very much aware of the impact a State store closing can have on an individual community. Because of this, I have requested the Liquor Commission to impose a moratorium on any further closings of State stores until January 1, when the Legislature will be meeting in regular session. In addition, I have asked the Liquor Commission to review the 10 closings it has previously authorized and to receive public and legislative input from given areas prior to a final decision. The Commission has informed us that it will honor these requests.

Therefore, I feel, L.D. 1964, is unnecessary and would be unduly costly to Maine people. As Governor, I also assume the responsibility of working closely with the Liquor Commission, the public and members of the Legislature from this point to the next regular session when problems of agency stores can be more timely and properly evaluated without imposing additional and unnecessary costs on the people of Maine in the interim.

I respectfully ask that my veto of this bill be sustained.

Very truly yours,
(Signed) JAMES B. LONGLEY
Governor

The Communication was read and ordered placed on file.

The SPEAKER: The question now before the House is, shall this Bill become law notwithstanding the objections of the Governor.

The Chair recognizes the gentleman from East Millinocket, Mr. Birt.

Mr. BIRT: Mr. Speaker, Ladies and Gentlemen of the House: I will try to give you just a little background of this particular piece of legislation.

In the regular session, a bill was passed allowing An Act Relating to Special Agency Stores, and in this bill there was this clause. It said that agency stores could be instituted in towns where there is no state store. That is solely, without going through the whole bill, the pertinent part of this.

Back last October, there was an ad in the paper for applications for agency stores. Among the towns that were listed requesting applications to be submitted for an agency store, there were several that had state stores.

Among them was a town in my district, the Town of Patten. I talked with the people in Patten who at that time indicated they wanted to keep the store and preferred not to have an agency store, so I had legislation introduced because I felt that the Liquor Commissioner was operating outside of the intent of the law, in fact, that he was taking the position that he could close a store and then there was no store there. Then he could institute an agency store.

The legislation said that in no event shall the bureau close an existing store, unless it is for the purpose of changing its location within said town or unless an existing state store was located within three miles of another state store or unless a net operating revenue cost of the existing state store exceeds 15 per cent. Those guidelines of three miles and 15 per cent were introduced by an amendment. The Commissioner felt that he had to have some direction, that we were tying his hands if we said he couldn't close a store without having some guidelines.

We recommended at that time that they put language in requiring a public hearing to see what the thinking of the people was in the area. He objected to that language, so this language is the language that has come in.

Now, at the present time, the state stores are being established with an 8 per cent markup, and he has indicated to me in a conversation that it is his thinking that eventually all of the cost of operation would probably be changed over into agency stores. That means that about 40 stores, including the stores in practically every small town in the State of Maine, will be closed.

One of the first actions that the Commissioner took on this particular piece of legislation was closing the store in the City of Saco. Saco had a store in which the gross business was \$269,000, and they made a net income of \$140,000 after they paid all of their expenses. The store's cost of operation was 7.60 percent, and yet he went ahead and closed that store. And June 3 of this year, there was an ad that appeared in the paper requesting application for agency stores, and there were 12 towns listed and among them was the City of Saco.

It doesn't appear to me that the people in the State of Maine want to close a state store. Any conversations I have had with people in these towns indicates that they prefer to have a state store stay there.

In the Town of Patten, to go into that situation, there are two grocery stores up there. Both of the owners of those stores have called me and said that they prefer to keep the state store there, that neither one of them wants to have an agency store installed in their store. In one case, the Commissioner did go to the operator of one of the stores and asked him if he would put in an application. This was back last October. He put in an application and the Commissioner called him in December indicating that he could have the store, and he said that after thinking it over he was not convinced he wanted it and said he thought he would prefer to have his application withdrawn. Since then, I have talked with him. Saturday, I had a call from the store owner and the other one saying that he hoped they would not take the state store out, that they preferred to leave it this way.

I have heard that some of the stores, and there was a comment in the paper, that some of the stores that have already been set up as agency stores are not satisfied with the 8 percent figure, they don't figure it is a satisfactory figure, that it costs them more than that to do business.

The Governor has indicated that he will put a moratorium on the closing of stores until some other language could be worked out or a program of public hearings set up. This is the direction that the Executive Department

prefers to take and I see no harm in overriding this veto and then next fall or next winter when we come back in, we can make a decision as to what direction we want to go in the handling of stores.

The agency store concept has never been reviewed by local people. Every other change in the liquor laws that has ever been made, instituting of taverns, all types of beer to take out, sale on the premises, these have all gone to a local referendum. This is the one case where it hasn't even been done by referendum.

I certainly hope today that you will override this veto.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker and Members of the House: It is unfortunate that this bill is before us this afternoon, and it is unfortunate that the bill had to be introduced in the first place. It is unfortunate that we are voting either to sustain the Governor's veto or to override the Governor's veto.

Representative Birt from East Millinocket and many others saw what happened, he saw what happens when state bureaucracy does not follow the wishes of the legislature. In this particular situation, the State Liquor Commission circumvented the intention of the state agency store concept. As you can see through the figures that Representative Birt of East Millinocket stated, the City of Saco store was closed. The City of Saco store had a cost of operation of only 7.6 percent. It also grossed over \$260,000. It had a net income of \$140,000. Now, it would be sound business sense to keep the store open, not to close the store. But, unfortunately, the state bureaucracy and the State Liquor Commission took it in their own hands and did not go along with the intention of the legislature and closed the store, which circumvented the whole intention of the state system which we have with state agency stores.

L.D. 1964 is not a panacea by any means, but I think it is needed to reinforce the legislative intent of the state agency store concept. It is my hope this afternoon that this legislature will override the Governor's veto in order to give a message to any state bureaucracy, whether it be the State Liquor Commission, Highway Department or whatever, that they have got to start going with the intention of the legislature.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: About a week ago, this was drawn to my attention in my own home town of Eastport. We have a declining population and the waves took away a lot of our property on the waterfront, so I got kind of interested in it and I found out about the state liquor store in Eastport made a profit of \$57,000 last year. Now the bureau wants to put this into a private agency. Well, just what is this? A place making \$57,000 profit over and above expenses is to be handed over to private industry. Is this strictly what we are here for, to give out handouts?

So further talk with people involved with the question. Stop and think of this. From where Eastport is located, it is 28 miles to Calais, it is 44 miles to Machias. If an agency takes this over in Eastport, the liquor will be shipped either to Machias or to Calais. The agency has to go there and pay for its trucking and everything else, plus the employment of a man to do all of this, and then try to make a profit on 8 percent. This just doesn't figure out in any of the figures I have ever seen, and I don't believe anybody else can show me figures where this is a feasible operation to close that state liquor store. I will vote to override.

The SPEAKER: The pending question is, shall this Bill become law notwithstanding the objections of the Governor. Pursuant to the provisions of the Constitution, the yeas and nays

are ordered. If you are in favor of this Bill becoming law notwithstanding the objections of the Governor, you will vote yes; if you are opposed, you will vote no.

ROLL CALL

YEA — Albert, Bachrach, Bagley, Bennett, Berry, G. W.; Berry, P. P.; Berube, Birt, Boudreau, Carpenter, Carroll, Chonko, Connolly, Cooney, Curran, P.; Curran, R.; Davies, Doak, Dow, Drigotas, Dudley, Durgin, Farley, Farnham, Fenlason, Flanagan, Fraser, Goodwin, K.; Gould, Greenlaw, Henderson, Hennessey, Higgins, Hobbins, Hughes, Immonen, Jackson, Jensen, Joyce, Kany, Kaufman, Kennedy, Laverty, LeBlanc, Lovell, Lynch, MacEachern, Mahany, Martin, A.; Martin, R.; McKernan, McMahon, Mills, Mitchell, Morin, Morton, Mulkern, Nadeau, Najarian, Powell, Raymond, Rideout, Rolde, Saunders, Smith, Sprowl, Stubbs, Talbot, Teague, Theriault, Tierney, Torrey, Tozier, Twitchell, Usher, Walker, Webber, Wilfong, Winship, The Speaker.

NAY — Ault, Blodgett, Bowie, Burns, Bustin, Byers, Call, Carey, Carter, Churchill, Clark, Connors, Cote, Curtis, Dam, DeVane, Dyer, Faucher, Finemore, Garsoe, Gauthier, Gray, Hall, Hewes, Hinds, Hunter, Hutchings, Jacques, Jalbert, Kelleher, Kelley, Laffin, Leonard, Lewin, Lewis, Littlefield, Lunt, Mackel, MacLeod, Maxwell, McBrearty, Miskavage, Norris, Palmer, Peakes, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Quinn, Rollins, Shute, Snow, Snowe, Spencer, Strout, Susi, Tarr, Wagner.

ABSENT — Cox, Goodwin, H.; Ingegneri, LaPointe, Lizotte, Pearson, Silverman, Truman, Tyndale.

Yes, 80; No, 62; Absent, 9.

The SPEAKER: Eighty having voted in the affirmative and sixty-two in the negative, with nine being absent, the veto is sustained.

The following Communication:
STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE

June 11, 1976

To: Members of the House of Representatives and Senate of the 107th Legislature

I am returning H. P. 2351, L. D. 2354, "An Act Appropriating Funds To the Schoodic Community School District" without my approval.

I object to this bill because it provides supplementary funding to a community school district in addition to that provided under the School Finance Act of 1976 and is contrary to the intent of a comprehensive school finance law.

In addition, legislation was never referred to a committee for review; received no public hearing; and was rushed through the Legislature at the last possible minute. If further consideration of this matter is in order, I would hope it would only take place after both committee study and public hearing on the matter sometime in the future.

For these reasons, I respectfully request that you sustain my veto.

Very truly yours

Signed:

JAMES B. LONGLEY, Governor

The SPEAKER: The pending question is, shall this bill become law notwithstanding the objections of the Governor.

The Chair recognizes the gentleman from Franklin, Mr. Connors.

Mr. CONNORS: Mr. Speaker and Members of the House: I will be very brief in what I have to say. It is due to the increase in the costs over the last two years in administration and salaries, and in order to utilize all of the room within the new school — this is a brand new school that we will go into this fall, and special ed, home ec and industrial arts are included in

this, and in order to utilize the entire school, this \$25,000 would help tremendously.

I hope that you will vote with me to override the Governor's veto.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. speaker and Members of the House: I would like to say a few words on item 3, and they apply equally as well to item 4, the two vetoes.

In the Governor's message, he said he objects because it provides supplementary funding to a community school district in addition to that provided under the School Finance Act of 1976 and is contrary to the intent of a comprehensive school finance law.

In addition to the regular allocations to school units across the state, we do have supplemental funding. We have it for geographical isolation, we have it for increasing enrollments and we have it for private school transportation, so supplemental funding is not new. It is contrary to the intent of a comprehensive school finance act of 1976 and there, I think, is the heart of the problem.

When these two school units voted to build new schools, they were operating under a law which based its subsidy program on two-year-old costs and we have changed the rules of the ballgame now and they are operating on one-year-old costs.

We have in the past grandfathered when we have enacted legislation. If we do not override these vetoes, what we are doing is unilaterally altering a contract between the state and the school districts, because these units voted for a school building under existing law and that law has now been changed.

There may be arguments that this will open up other areas from other districts requiring supplemental funding. This is not true, because the 108th, when it meets, will be operating under one-year-old costs, so this is a one-time situation and involves only these two districts.

Furthermore, the present law now includes a provision that requires that the voters be put on clear notice that the local unit must bear the initial operating cost associated with a new facility. This was not under the law under which the voters voted for these two school buildings. Both of these areas have relatively limited local tax bases and are experiencing increasing student population trends. Both students were educating their students under extremely different conditions during 1974-75, and that is the year which serves as the base year for operating cost determinations for next year's subsidy.

So what we are doing to these two districts if we don't override the Governor's veto and appropriate this money, we are changing the rules of the ballgame, we are making them operate under different conditions from that under which they voted to build a new building.

I think we are morally and ethically bound to live up to the commitments that were made under the school law prior to the changes of 1975, and I hope you will support the overriding of both bills.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, I would like to pose a question. I understand that there is no money in the school funding, in the department, and if there isn't, where will this money come from and will it be taxes or just what?

The SPEAKER: The gentleman from Madison, Mrs. Berry, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker and Members of the House: This is a private special law. There are two bills here — one for Schoodic, one for Litchfield, Sabattus and Wales.

Let me briefly go back and say that the Schoodic District, the average state reimbursement rate is \$754,000, and for the district it is \$588.37. There is an increase in the budget of \$82,327 over the previous year. They have raised the 2 mills but they are still short \$25,000.

Under this bill and the following bill, they have to raise matching funds. In other words, Schoodic would have to come up with half of the increase and Litchfield, Sabattus and Wales would have to come up with half of their increase, which is a little under \$50,000 to match \$50,000 from the state. This is not unique. We have done this in the past. In fact, this year we are giving \$30,000, as we did last year, because of MCI's desire to increase their tuition, and we have provided \$60,000 for the biennium to help the towns raise that money.

Richmond has received assistance under a special bill similar to this. In the Lincoln area they have received funding under a bill similar to this. This is not unique. I think we have to recognize that although we can put in black and white a school funding law, there are going to be exceptions that have to be addressed in order to be fair and equitable to all.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. DeVane.

Mr. DEVANE: Mr. Speaker and Members of the House: I would thank Mr. Lynch for his very careful and precise portrayal of a special situation. I intend to join Representative Connors in trying to remedy the situation and I ask that you do so.

The SPEAKER: The Chair recognizes the gentleman from Island Falls, Mr. Walker.

Mr. WALKER: Mr. Speaker and Members of the House: I had in a bill similar to these two bills. My bill passed both houses, went onto the table and was thrown out. Why was my bill thrown out and not those two?

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry about these school bills, but in the City of Brewer under the new school act, because of the increased local expense, we have had to close two schools. Under the present funding law, Brewer has had to close two schools in the system. We have had to come up with a great deal of extra money to keep our schools open, including the high school, so today I am going to have to vote to sustain the Governor's veto and I hope everyone joins me. Let's give this law a chance to work without every time that our own personal ox starts to be good, then we go in for a special piece of legislation to take care of our special situation. Let's try and let the law work and let these communities come back next year to the Department of Education and Cultural Services and seek the relief that is available already in the present law.

The SPEAKER: The Chair recognizes the gentleman from Bridgewater, Mr. Finemore.

Mr. FINEMORE: Mr. Speaker and Members of the House: I agree with Mr. Walker from Island Falls. There is not a district in the State of Maine, community school district, that has worked as hard to keep the expenses down as the Island Falls District. I believe when they were turned down, we should turn down everything else that comes in like it, because I don't think there is a school along the coast or anywhere else that deserves it any more or has any greater tax burden than the Town of Island Falls, Dyer Brook, Smyrna Mills, Oakfield and several other small communities in there.

I will vote to sustain the Governor's veto.

The SPEAKER: The Chair recognizes the gentleman from Blue Hill, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: I rise today in favor of this bill. I think this may be one chance for this House to do something for the coastal communities, in that Schoodic is a coastal com-