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Sunday Closing Law
17 M.R.S.A. § 3204

bcc: Criminal Div.

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November 29, 1978

Henry N. Berry, III
District Attorney
Prosecutorial District 2
142 Federal Street
Portland, Maine 04101

Dear Mr. Berry:

We are responding to your letter of November 16, 1978, requesting an opinion with regard to certain aspects of the Sunday Closing Law (17 M.R.S.A. § 3204). Specifically, you have asked whether the exception from the statute based upon the number of employees or the size of interior customer selling space would be applicable in the following situations:

1. A store with 8 employees and 4,000 square feet of selling space.
2. A store with 3 employees and 8,000 square feet of selling space.
3. A store with 3 employees and 4,000 square feet of selling space.

The statute in question, 17 M.R.S.A. § 3204, reads, in pertinent part:

"No person, firm or corporation shall, on the Lord's Day; . . . keep open a place of business to the public except for works of necessity, emergency or charity.

"This section shall not apply to: . . . stores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular

conduct of business; stores which have no more than 5,000 square feet of interior customer selling space, excluding backroom storage, office and processing space.

"For the purpose of determining qualification, a 'store' shall be deemed to be any operation conducted within one building advertising as, and representing itself to the public to be, one business enterprise regardless of internal departmentalization. All subleased departments of any store shall for the purpose of this section be deemed to be operated by the store in which they are located. Contiguous stores owned by the same proprietor or operated by the same management shall be deemed to be a single store for the purpose of this statute."

The implied question presented in your examples is whether the two exceptions set forth in the second paragraph of the quoted statute above are to be read together or are to be read as separate exceptions. This office has previously issued its opinion that the exceptions are separate. 1963-64 Report of the Attorney General, page 46 and 47. In other words, if there are no more than 5 persons including the proprietor usually and regularly employed within a store, the exception would apply regardless of the fact that the store may have interior customer selling space which exceeds 5,000 square feet, and vice versa. Since this interpretation of the statute has been clearly stated by the Supreme Judicial Court, we affirm our earlier opinion. Opinion of the Justices, 159 Me. 410 (1963); State v. S. S. Kresge, Inc., 364 A.2d 868 (Me., 1976).

The foregoing answers your general question regarding separate status of the area and employee exceptions to the Sunday Closing Law. However, we note parenthetically that the application of either or both of these standards in any given situation would depend upon the specific facts present. Please let us know if we can be of further assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

cc: All District Attorneys