

# MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date February 5, 1979

To Guy Marcotte, Director

Dept. Bureau of Alcoholic Beverages

From Phillip M. Kilmister, Asst. Atty. Gen.

Dept. Attorney General-Bureau of Taxation

Subject Request for Opinion Re: Legislative Intent of Chapter 180, Public Laws of 1969

In answer to your recent memorandum submitted to this office under date of January 25, 1979, please be advised that the enactment of P.L. 1969, c. 180, did not grant immunity from prosecution to state liquor store employees who sell liquor to minors.

The terms of 28 M.R.S.A. § 1058 entitled "Furnishing liquor to certain persons prohibited", were amended by the enactment of P.L. 1969, c. 180, to read as follows:

"Whoever, other than a licensee or his agent within the scope of their employment, knowingly procures or in any way aids or assists in procuring liquor or whoever furnishes, gives or delivers liquor to a minor who may not legally purchase liquor for himself or for any intoxicated person, pauper, mentally ill person or person of known intemperate habits, except that this provision shall not apply to liquor served to a minor in a home in the presence of his parent or guardian, shall be punished by a fine of not more than \$200 or by imprisonment for not more than 11 months, or by both." (emphasis supplied)

During the same 1969 general session of the Legislature, it is interesting to note that Chapter 81 of the Public Laws of 1969 was enacted, which further evidenced a clear-cut legislative intent to posit the disposition of violations of laws governing the sale and disposition of alcoholic beverages by licensees and their agents, solely within the jurisdiction of the Administrative Court. The pertinent part of P.L. 1969, c 81 (now 28 M.R.S.A. § 401) reads as follows:

"The Administrative Court Judge shall have sole and exclusive jurisdiction of all violations by licensees and their agents of the liquor laws in this Title, when no criminal penalty is provided."

There is, however, no legislative record which would indicate any intention on behalf of the Legislature to shield employees of state liquor stores with the same immunity from prosecution regarding sales of alcoholic beverages to minors, as that which has been accorded to licensees and their agents, pursuant to the express terms of 28 M.R.S.A. § 1058.

One cannot reasonably interpret the statutory language "licensee" or "his agent," to include state liquor store employees. They are clearly neither!

The language of 28 M.R.S.A. §1058 is sufficiently inclusive to apply to state liquor store employees, but even if this were not the case, the language of 28 M.R.S.A. §155 read in conjunction with the statutory language of 28 M.R.S.A. §1, would formulate a basis for the institution of criminal action.

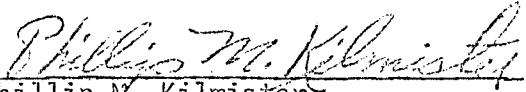
The language of 28 M.R.S.A. §155 reads bluntly as follows:

"No sales shall be made in state stores to minors or persons under the influence of liquor."

The language of 28 M.R.S.A. §1, represents a "catch-all" penalty clause applicable to many statutory violations, including "sales to minors."

"Whoever shall purchase, import, transport, manufacture, possess or sell alcohol in this State in violation of law shall be punished by a fine of not more than \$200 or by imprisonment for not more than 6 months, or by both."

In brief answer to the second question set forth in your memorandum, it would clearly be impermissible for a member of the staff of the Attorney General, to act as legal counsel for a state liquor store employee charged with the commission of a crime.

  
Phillip M. Kilmister  
Assistant Attorney General

PMK:dp