

MAINE STATE LEGISLATURE

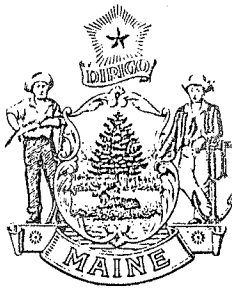
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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 13, 1979

Honorable Bonnie Post
House of Representatives
State House
Augusta, Maine 04333

Re: Bottle Bill.

Dear Representative Post:

This is in response to your oral request for an opinion as to whether a distributor is obligated to pay the refund and handling charge to a dealer or redemption center upon receipt of bottles from such dealer or redemption center. Although the statute is not entirely clear on this issue, it appears that a distributor becomes obligated to pay the deposit and the handling charge to a dealer or redemption center upon receipt of bottles therefrom. This interpretation is not, however, to be construed as preventing a private contractual relationship pursuant to which the parties agree that payment may be made at a later time.

Title 32 M.R.S.A. § 1866 provides that a distributor must accept returned beverage containers as follows:

"A distributor shall not refuse to accept from any dealer or local redemption center any empty unbroken and reasonably clean beverage container of the kind, size and brand sold by the distributor or refuse to pay to the dealer or local redemption center the refund value of the beverage container as established by section 1863."
32 M.R.S.A. § 1866.3. (emphasis supplied)

In addition, the statute provides that a distributor must reimburse the dealer or local redemption center for the cost of handling:

"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 1 cent per returned container." (emphasis supplied) 32 M.R.S.A. § 1866.4.

The analogous provision requiring dealer payment to consumers provides specifically that the payment must be made in cash:

"Except as provided in this section a dealer shall not refuse to accept from any consumer. . . any empty unbroken and reasonably clean beverage container . . . or refuse to pay in cash the refund value of the returned beverage container as established by section 1863. . . ." (emphasis supplied) 32 M.R.S.A. § 1866.1.

A comparison of the two sections appears to indicate legislative understanding of a deposit system with a refund of the amounts due upon return of the bottles. (See, e.g., Legislative Record, March 30, 1976, p. 809, concerning discussion of the referendum language regarding the 5 cent deposit.) While the language concerning cash payment in § 1866.4 implies that it is appropriate for a distributor to pay in a manner other than cash, this is not dispositive of the question as to when the distributor's obligation to pay arises. On the one hand, it would seem that the relationships among distributors, dealers and redemption centers is most properly determined in the private sector without governmental regulation. On the other, the Legislature of the State of Maine has seen fit to enact legislation governing these relationships at least to some extent. In this case, the Legislature has required mandatory refund and handling charge provisions and has provided a penalty for violation of such provisions:

"A violation of this chapter by any person shall be a civil violation for which a forfeiture of not more than \$100 may be adjudged." 32 M.R.S.A. § 1869.

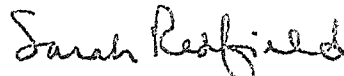
The legislative history of the bottle bill indicates that several alternative approaches were considered. In the regular session of the 107th Legislature, Legislative Document 1889 indicated that its purpose was to allow normal economic consideration to determine the implementation of the proposed bottle bill. The Legislature ultimately rejected this option of leaving all of the financial procedures contemplated by the bottle bill to the private sector for determination. Instead, the Legislature established a minimum deposit leaving to the manufacturer the actual amount of deposit beyond this. See 32 M.R.S.A. § 1863. Similarly, the Legislature provided a handling charge and reimbursement mechanism.

In this context, 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 to be of primary significance in construing a statute, and that no section or word of a statute is to be construed as surplusage. 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).

The legislative history does not reflect any material information concerning the specific question you ask. Reading the bottle bill as a whole, in light of the above general rules of statutory construction, it seems that the Legislature contemplated that payment would be due when bottles were received and that penalty provisions would then attach. Otherwise, the penalty established in Title 32 M.R.S.A. § 1869 for failure to comply with the bill would always be in a state of uncertainty. A refusal to pay, which would be a violation of Title 32 M.R.S.A. § 1866.3 and § 1866.4, would not be subject to penalty provisions so long as the distributor insisted that he/she "intended" to pay. This is not a workable system for enforcement of the law, and the Legislature must be presumed to have acted knowing the practicalities of the system.* Accordingly, in viewing the statute as a whole, it appears that a distributor becomes obligated to pay (though he is not required to pay in cash) upon receipt of the bottles from a redemption center or dealer; this does not preclude, however, a private contractual arrangement fixing a specific alternative time for payment, should both parties agree.

If I can be of further assistance, please let me know.

Sincerely,



SARAH REDFIELD

Assistant Attorney General

SR/ec

* As a matter of enforcement policy, this office would probably not bring an action for violation of 32 M.R.S.A. § 1859 until a reasonable period had elapsed after nonpayment.