

MAINE STATE LEGISLATURE

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79-121 51

STATE OF MAINE

Inter-Departmental Memorandum Date May 18, 1979

To Guy Marcotte, Director

Dept. Bureau of Alcoholic Beverages

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject Opinion in re Special Agency Stores.

In your memorandum addressed to me relating to the granting of a special agency store license in a small community in which there are an insufficient number of residents to conduct a local option election, pursuant to the terms of 28 M.R.S.A. § 103, you have posed the following questions:

"1. Is the State Liquor Commission empowered to establish a State Agency Store in an unincorporated place, if in their opinion, one is warranted for public convenience, necessity or demand? (emphasis supplied)"

"2. If the answer is yes, should this action be approved by the County Commission prior to the granting of the Agency?"

The answer to both questions is in the negative.

It should be emphasized that the State Liquor Commission has sole and exclusive authority for the establishment of state stores and licensing of special agency stores for the retail sale of liquor for off-premises consumption. The establishment and operation of state stores, or granting of licensure to special agency stores, is not contingent upon the prior approval of any intermediate authority such as the municipal offices of a city or town, or the county commissioners in the case of unincorporated places.

Section 53 of Title 28 of the Revised Statutes delineates the various powers and duties of the Commission and provides in pertinent part, as follows:

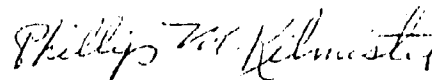
"7. Sell at retail. To sell at retail in state stores in original packages and for cash, either over the counter or by shipment to points within the State, wine, except table wine, and spirits of all kinds for consumption off the premises at state stores to be operated under the direction of the commission."

The authority to grant licenses for the operation of special agency stores is likewise vested solely within the Commission, and is set forth in 28 M.R.S.A. § 153, as follows:

"The State Liquor Commission shall have authority to license and regulate, in cities, towns and unorganized territories which have voted in favor of the operation of state stores under local option provisions and where there are no state stores, and on islands which are within cities, towns and unorganized territories where there are state stores but which are not connected to those cities, towns and unorganized territories by bridge and which have no state stores on them, retailers as special agency stores on an annual, seasonal or temporary basis for the purposes of selling liquor in sealed bottles, containers or original packages for consumption off the premises.... (emphasis supplied)"

512

As noted by the above-quoted statutory language, a condition precedent to the granting of a license for the operation of a special agency store by the State Liquor Commission, is that the voters of any given locality, must sanction their approval for the existence of a state store in their community by an affirmative vote on said local option question. (see in this regard, 28 M.R.S.A. § 101, subsec. 1.) In the absence of such an affirmative vote in any given locality, the Commission may neither license a special agency store nor authorize the establishment of a state store.



Phillip M. Kilmister
Assistant Attorney General

PMK/fep