

# MAINE STATE LEGISLATURE

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79-202

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AUGUSTA, MAINE 04333

November 30, 1979

William H. Dale, Esquire  
Corporation Counsel  
City of South Portland  
25 Cottage Road  
South Portland, Maine 04106

Re: Licensing of beano and games of chance

Dear Mr. Dale:

I am writing to you in response to your question as to the authority of a municipality to charge a license fee on the operation of beano and games of chance in addition to any such fees already imposed by the Maine State Police.

Please understand that this letter is not a formal opinion of the Attorney General, and is merely my informal advice. I represent the Beano and Games of Chance division of the Maine State Police.

I would agree with your observation that the applicable statutes, 17 M.R.S.A. §§311-325 (Chapter 13-A) and 17 M.R.S.A. §§330-346 (Chapter 14), suggest that the Chief of the Maine State Police is indeed the exclusive licensing authority for both types of contests. Both chapters include extensive requirements for license eligibility, and broadly empower the Chief to supervise applicants and licensees through extensive investigation prior to issuance of a license and through financial reporting requirements during the licensed period.

Despite this comprehensive statutory structure, however, the Chief is not the sole authority in the application process. Both chapters indicate that as a predicate to the issuance of a license, the municipal officers where the contest is to be conducted must consent in writing on the application itself. 17 M.R.S.A. §§313, 333. There are no statutory standards, however, for the guidance of these officers when deciding whether or not to grant their consent. The delegation of this obligation to grant consent, and therefore the concomitant right to deny consent, clearly implies

that local governments may have at least some input in the application process.

Authority for local regulation lies in the Maine Home Rule Act, 30 M.R.S.A. §1917. That Act, enacted in 1969, enables any municipality

"by the adoption ... of ordinances ... [to] exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication ..."

The Legislature certainly has the power to confer upon local municipalities the authority to license these contests. The question here is whether the Legislature has "by clear implication" denied them this authority.

Sections 317 (Beano) and 343 (Games of Chance) both state that the "Chief of the State Police shall have the power to make and adopt rules and regulations, not inconsistent with law, which he may deem necessary for the administration and enforcement of this chapter and for the licensing, conduct and operation" of beano and games of chance. Neither section in any way mentions the authority of municipalities to enact regulations. Nevertheless, a municipality would probably be acting properly were it to promulgate standards relating to the process by which the local decision on consent is reached, in order to insure that the procedure for the granting or denial of consent is not arbitrary or discriminatory.

If in fact a municipality can regulate in this limited manner, the next question would involve its authority to assess fees. Sections 314 (Beano) and 339 (Games of Chance) both state that "all fees" required by the licensing authority must accompany the application that is filed with the Chief of the State Police. No mention is made of local fees.

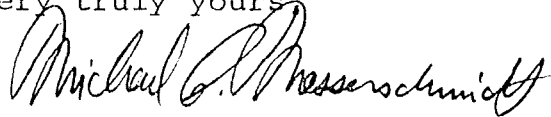
The general rule is that the amount of a fee imposed for the purposes of regulation must be limited and reasonably measured by the necessary or probable expenses of issuing the license, and of such inspection, regulation and supervision as may be lawful and necessary. State v. Brown, 188 A. 713 (Me. 1936); Ace Tire Co., Inc. v. Municipal Officers of Waterville, 362 A.2d 90 (Me. 1973). Therefore, a municipal ordinance which, under the guise of regulation, imposes a tax for revenue purposes is invalid in the absence of special legislative authorization.

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Given that the statutes appear to confer upon the Chief of the State Police the exclusive authority to issue licenses, and to inspect, regulate, and supervise licensed premises, the only fees a municipality can reasonably impose upon applicants are the costs actually associated with the granting or denying of consent on the application form that is to be presented to the Chief of the State Police.

Please contact me if I may be of further assistance.

Very truly yours

A handwritten signature in cursive script, reading "Michael G. Messerschmidt".

MICHAEL G. MESSERSCHMIDT  
Assistant Attorney General  
Criminal Division

MGM/mp

cc: Arthur A. Stilphen, Commissioner  
Department of Public Safety