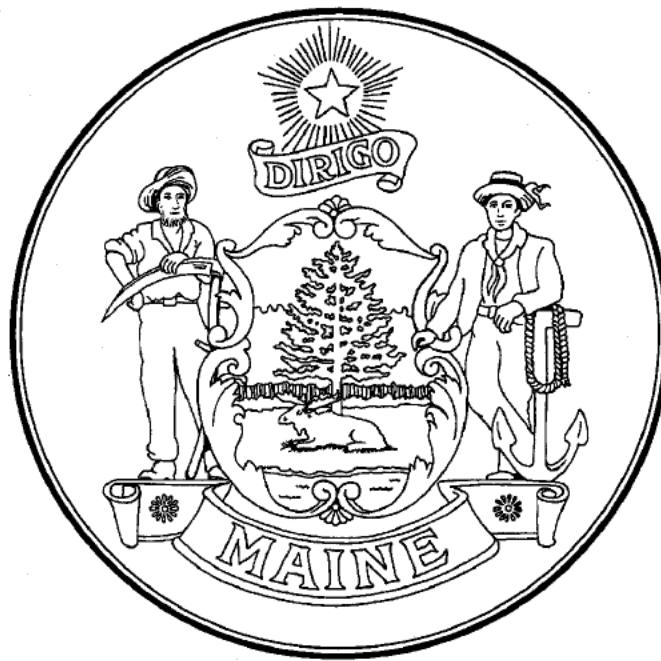


# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

December 7, 1979

Thomas E. Delahanty II, Esq.  
District Attorney  
Androscoggin County  
Two Turner Street  
Auburn, Maine 04210

Re: Sunday Sales - Malls

Dear Mr. Delahanty:

You have asked for our opinion as to whether stores located within enclosed shopping malls may remain open for business on Sundays if they would otherwise qualify under one of the exemptions listed in the Sunday Closing Law.

It is our opinion that individual stores which have no more than 5,000 square feet of selling space or which have no more than five persons regularly employed or which fall under any of the other specific exemptions should be permitted to do business on Sundays despite the fact that they are located within a larger physical structure characterized as a "mall."

Maine's Sunday Closing Law, 17 M.R.S.A. §3204, states that:

"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 sub-leased 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.

December 7, 1979

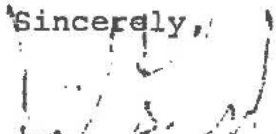
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The purpose of the above-quoted section of the statute, as is apparent from a reading of the entire legislative history, is to prohibit a circumvention of the statute by the large department stores by way of "departmentalizing" to smaller sales operations. While there is no specific mention of malls in the 1963 legislative history, as indeed, to our knowledge, no malls existed in Maine at that time, we believe that the above-quoted paragraph should be construed as a clarification rather than a definition of the term "store" as used in the statute. Applying the common definition of a "store," and following the directive of the statute to examine the specific "business enterprise," it is our opinion that the separate and distinct entities within the mall which advertise independently of the mall and derive business and profits separately from one another and which, in fact, in some cases compete against one another within a mall, must be considered as separate "stores" for the purpose of determining exemptions under the Sunday Closing Law.

While these stores might be deemed to be "contiguous," and while the real estate in which the stores are located may be owned and managed by a single corporation, it is apparent also that the business enterprise which the individual stores represent and present themselves to the public to be are owned and managed by different "proprietors." Applying the maxim that criminal statutes should be strictly construed, Davis v. State, 306, A.2d. 127, 129 (Me. 1973), it is our opinion that the last sentence of the above-quoted section of the statute should not be construed so as to prohibit the operation of otherwise-exempt stores within a mall.

I trust this satisfies your inquiry.

Sincerely,

  
RICHARD S. COHEN-  
ATTORNEY GENERAL

RSC:sal