

MAINE STATE LEGISLATURE

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79-213

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 26, 1979

Thomas E. Delahanty, II
District Attorney
Androscoggin County Building
Auburn, Maine 04210

Re: Sunday Closing Law

Dear Mr. Delahanty:

You have asked for our opinion as to the legality of a proposed Sunday "Half-Off Fair" to be sponsored by radio station WLAM, in conjunction with Lewiston-Auburn merchants who will be selling merchandise at the Lewiston Armory in booths measuring 300 square feet each.

It is our opinion that those merchants who are ordinarily exempt from the Sunday Closing Law, by virtue of their size, number of employees or type of business, may lawfully participate in the Fair; that those merchants who are ordinarily not exempt would be in violation of the law; and that WLAM's conduct in sponsoring and promoting the Fair and in leasing and subleasing the premises would be lawful if all of the participating merchants are exempt from the Sunday Closing Law.

Maine's Sunday Closing Law broadly prohibits any "person, firm or corporation" from keeping open a place of business to the public on Sundays and specified holidays. 17 M.R.S.A. §3204. The law exempts certain types of businesses, such as newspapers, laundries, pharmacies, greenhouses, and sporting goods stores, and further exempts "stores" having no more than 5,000 square feet of selling space and "stores" having no more than five persons regularly employed.

Considering, in the first instance, the lawfulness of the individual merchants participating in the "Half-Off Fair," it is our understanding that some of these merchants ordinarily would

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fall within one or more of the above exemptions, while others would not. In determining whether a particular merchant may lawfully participate in the "Half-Off Fair" we believe we must look to the manner in which the merchant ordinarily conducts business, how it normally represents itself to the public, and what constitutes its primary and usual purpose.

While there is no legislative history directly on point, we believe that this construction of the statute is consistent with its underlying policy and with the purposes of the exemptions. This interpretation is further buttressed by the language of some of the specific exemptions. Thus, for instance, the statute exempts "industries normally kept in continuous operations; . . . establishments primarily selling boats, . . . sporting equipment, souvenirs and novelties; . . . stores wherein no more than five persons . . . are employed in the usual and regular conduct of business." [emphasis added]. In short, it is consistent with the purposes of the Sunday Closing Law to view participation in a Sunday "Half-Off Fair" as an extension of a particular store's usual weekday sales operations, even though the Sunday merchandising may take place in a different physical location.

If a particular business ordinarily has more than 5,000 square feet of selling space and more than five employees and is not otherwise exempt, we therefore conclude that it could not lawfully engage in Sunday sales by means of the "Half-Off Fair." Similarly, if a business is otherwise exempt, we conclude that it does not become non-exempt by selling its usual wares in a booth at the Armory as part of the "Half-Off Fair."*

* You also asked us to differentiate between booths selling "non-exempt" merchandise and those selling "exempt" merchandise. As is apparent from the foregoing, we view the exemptions as applying to the overall operation and primary purpose of a particular business enterprise. It is therefore irrelevant, in our view, that an exempt business might sell merchandise at the "Half-Off Fair" which a non-exempt business could not sell on Sunday. Conversely, it is irrelevant that a non-exempt business may desire to sell only merchandise which an exempt business, such as a greenhouse or sporting goods store, would be permitted to sell. Cf. State v. Kresge, 364 A.2d 868 (Me. 1976).

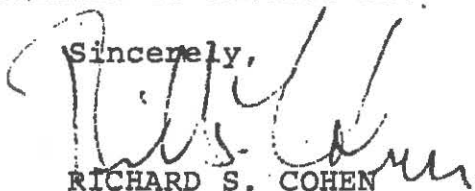
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If all of the merchants participating in the "Half-Off Fair" are otherwise exempt, we conclude that the Fair itself and the conduct of sponsoring organizations such as WLAM would be lawful. The conduct of the sponsoring organizations in this respect would be similar to the operation of a shopping mall containing small stores which stay open on Sundays and larger stores which do not. In other words, the conduct of the mall management and of sponsors of the "Half-Off Fair" are viewed as merely providing access to otherwise lawful Sunday sales activity.

If the "Half-Off Fair" includes merchants whose Sunday sales activity is not lawful, however, then the conduct of WLAM and any other sponsoring organizations could be called into question, insofar as it aids and promotes unlawful activity.

I trust this satisfies your inquiry. If you have any further questions, please do not hesitate to contact me.

Sincerely,



RICHARD S. COHEN
ATTORNEY GENERAL

RSC:jg

cc: John S. Oxman, Esquire