

MAINE STATE LEGISLATURE

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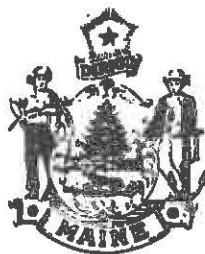


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RICHARD S. COHEN
ATTORNEY GENERAL



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

September 12, 1980

Asher D. Chambers
21 York Street
Caribou, Maine 04736

Dear Mr. Chambers:

This will confirm our recent telephone conversation concerning the matters raised in your letter to Representative Mathews dated July 16, 1980.

You told me that the bottles at issue bore no labeling other than the sticker and embossment described in the second paragraph of your letter. You wrote that the sticker simply reads "Butterfield Bottling Co., Old Town, Maine," and notes that a 5¢ deposit applies. The embossment consists of the words "no refill." You also told me that these bottles were purchased by your granddaughter at some point along the way from Lincoln to your Caribou residence.

The returnable beverage container law is codified as sections 1861 through 1871 of Title 32 of the Maine Revised Statutes. Section 1867, subsection 4 requires a local redemption center to accept for return any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by the dealers served by that center.

A local redemption center must designate these dealers and the kinds, sizes and brands of beverage containers sold by them in its application for approval by the Department of Agriculture, Food and Rural Resources. The order approving the application must also contain this information. Additionally, the center must prominently display the same information at the center itself. (Section 1867, sub-sections 1, 3, 4 and 5).

Department personnel confirmed what I suggested to you: that the type of bottle you described is not included in the order of approval for the Caribou Redemption Center as one sold by the dealers it serves. Your granddaughter either purchased them from a Caribou dealer not served by the center or, more probably, purchased them outside the Caribou area. The center's refusal to accept those bottles from you was lawful. To obtain your refund, you will have to present these bottles to a dealer who sells that bottle or to a local redemption center who serves him.

As we discussed, distributors are only obligated to accept for return from local redemption centers (and pay applicable deposits and handling charges thereon), bottles of the kind, size and brand sold by such distributors. (Section 1866.3). It seems that the distributors serving the Caribou area do not sell beverages bottled by Butterfield Bottling Co. Thus, if the Caribou Redemption Center had accepted the bottles in question from you and had paid the applicable deposit, it would have done so at its own risk.

You mentioned that one Caribou dealer sells soda in the exact same bottles as the ones your granddaughter bought, except that the circular label bears the name of a different bottline company. Assuming that this dealer is served by the center, you felt that the center should be obligated to accept the Butterfield bottles inasmuch as the two types are identical except for the bottler named on the small label. You told me that this label peels off quite easily.

This question hinges on a consideration of the meaning of the word "brand" as used in the law, which is not defined. Only if the two types of bottle can be deemed to be of the same brand would the Caribou redemption center be obligated to accept the Butterfield bottles. A brand is usually thought of as the name of a product, which may or may not be the same as or similar to the name of the manufacturer of that product. Where the only identifying mark on a beverage container is the name of the bottler, in my opinion that name should be considered its "brand" for purposes of the returnable beverage container law. For this reason the Caribou Redemption Center would not be obligated to accept the Butterfield bottle even though it must accept a nearly identical counterpart which is sold by a member dealer.

You felt that this result is illogical in that the bottles themselves are the same. The only explanation I can suggest to you is that the limitation of distributors' acceptance obligations to bottles of the kind, size and brand sold by them provides at least some protection against distributors having to pay deposits and handling charges on bottles greatly in excess of the number sold by them. This is particularly important in the case of non-refillable bottles, such as the ones you wrote about, which distributors can re-use.

For your information, a copy of the law is enclosed. If I can be of further assistance, please feel free to contact me.

Very truly yours,


JEFFREY FRANKEL
Assistant Attorney General

JF:jg