

# MAINE STATE LEGISLATURE

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STATE OF MAINE

80-144

Inter-Departmental Memorandum Date October 10, 1980

To Guy Marcotte, Director

Dept. Bureau of Alcoholic Beverage

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject 28 M.R.S.A. § 301

Memorandum of Counsel

This is in response to your request for advice as to whether 28 M.R.S.A. § 301 prohibits the issuance of a liquor license to a certain applicant in Calais, Maine. As we understand it, the problem arises out of a dispute concerning the distance between the main entrance of the premises for which the license is sought and the main entrance of a church.

In the final analysis, the answer to your inquiry depends upon certain factual determinations which must be made by the Commission. These factual issues are explained more fully below.


28 M.R.S.A. § 301 provides in relevant part:

No new hotel, restaurant, tavern or club licenses shall be granted under this Title to new premises within 300 feet of a public or private school, school dormitory, church, chapel or parish house in existence as such at the time such new license is applied for, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel, except such premises as were in use as hotels or clubs on July 24, 1937. . . . (emphasis supplied)

Under the plain language of the statute, the Commission must resolve three factual questions. It must determine: (1) the main entrance of the premises for which the license is sought; (2) the main entrance of the church in question; and (3) the distance, by the ordinary course of travel, between these points. If the Commission finds that this distance exceeds 300 feet, then 28 M.R.S.A. § 301 would not prohibit the issuance of the license.

We are informed that this matter has been complicated by the fact that the building in which the license applicant seeks to locate is undergoing some renovation. We fail to see any legal significance in this fact. The task for the Commission remains the same, namely, to determine what the distance will be between the main entrance of the church and the main entrance of the premises for which the license is sought.

While no question has been raised as to the definition of "main entrance," one court has characterized it as the entrance which is "most used by those who frequent the particular building." Heyert v. District of Columbia, Alcoholic Beverage Control Board, 399 A.2d 1309, 1312, (D.C. 1979). Under this definition, the Commission would have to determine the entrance most used by those who attend the church, the entrance which will be most used by those who will frequent the prospective business, and the distance between these points.\*

  
PHILLIP M. KILMISTER  
Assistant Attorney General

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\* It appears that part of the problem for the Commission stems from the fact that until the license applicant commences business, it is impossible to determine with finality which door will actually serve as the main entrance to the premises. Along these lines, it bears noting that should a license be granted and should the Commission subsequently find that a door within 300 feet of the main entrance of a church is being used as the main entrance to the licensed premises, then the license could be revoked under 28 M.R.S.A. § 401(2)(C).