

MAINE STATE LEGISLATURE

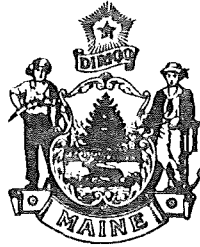
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JAMES E. TIERNEY
ATTORNEY GENERAL



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

January 26, 1982

Honorable Melvin A. Shute
Senate Chairman
Committee on Legal Affairs
State House
Augusta, Maine 04333

Honorable Harold R. Cox
House Chairman
Committee on Legal Affairs
State House
Augusta, Maine 04333

Dear Senator Shute and Representative Cox:

This will respond to your letter of January 20, 1982, in which you ask whether the State Liquor Commission may authorize the operation of a special agency store in the Town of Winslow.

As related to us, the facts underlying your question may be summarized as follows. There is currently operating in Winslow a state liquor store which the Commission intends to close because of the expiration of its lease. To replace this store, the Commission proposes to issue a license to a retailer to open a special agency store. That store would be located within ten miles of a state store in Waterville. Your specific inquiry is whether the opening of the agency store in Winslow would violate 28 M.R.S.A. § 153. We conclude that it would violate that section.

The relevant language in 28 M.R.S.A. § 153 reads as follows:

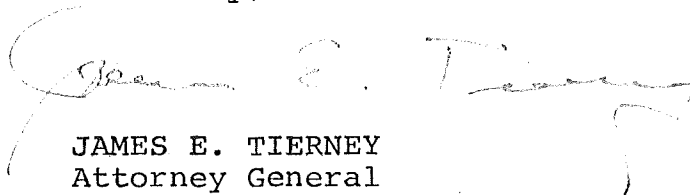
. . . . The commission shall not license any additional agency stores which would be within a 10-mile radius of a state store or agency store. If a state or agency store closes, it may not be replaced if there is another state or agency store within a 10-mile radius, except that, after the closing of any agency store which was licensed prior to December 1, 1979 and which is within a 10-mile radius of a state store or another agency store, that agency store may be replaced once after December 1, 1979.
(Emphasis added.)

Section 153 thus prohibits the location of an agency store within ten miles of an existing state or agency store. This prohibition applies whether the agency store is a new outlet or is a replacement for a state or agency store which is being closed. The sole exception pertains to the single replacement of an agency store which was licensed prior to December 1, 1979.

Given the clear prohibition in section 153,^{1/} it is our opinion that the Commission may not issue a license for the operation of a special agency store to be located in Winslow at a site within ten miles of the state store in Waterville. This conclusion holds true whether the agency store is viewed as an additional store or as a replacement for the state store which currently serves the Town of Winslow.

I hope this addresses your concerns.

Sincerely,



JAMES E. TIERNEY
Attorney General

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^{1/} That the Legislature intended the quoted portion of section 153 to prohibit the placement of an agency store within ten miles of an existing state or agency store is clearly reflected in the legislative history of the bill which added that language to section 153. See Statement of Fact to L.D. 602 of the 109th Legislature; see also Legislative Record, 109th Legislature, p. 592 (House of Representatives, April 2, 1979).