

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



83-24

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

May 27, 1983

Guy A. Marcotte, Director
Bureau of Alcoholic Beverages
State House Station #8
Augusta, Maine 04333

Dear Director Marcotte:

You have inquired into the powers of the Joint Standing Committee on Legal Affairs to effect the decisions of the State Liquor Commission regarding the closing of State liquor stores, pursuant to 28 M.R.S.A. § 153. For the reasons that follow, it is the Opinion of this Office that the powers of the Committee with regard to the closing of such stores are advisory only.

28 M.R.S.A. § 153 (Supp. 1982) provides, in pertinent part:

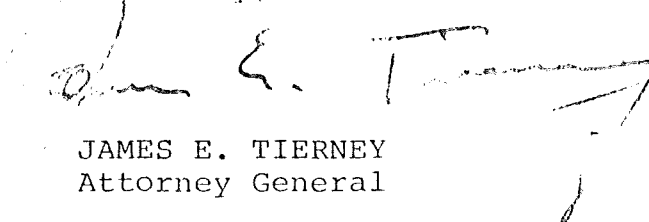
The commission shall not close any state store unless, no fewer than 60 days before the effective date of the closing, it notifies the Joint Standing Committee on Legal Affairs, which may hold a public hearing on the proposed closing and advise the commission of its findings.

No other provision of Section 153 expressly authorizes the State Liquor Commission to close existing State liquor stores. Nonetheless, it may be inferred from the quoted provision that such power exists. The question which you raise concerns the power of the Joint Standing Committee on Legal Affairs to effect the decision of the State Liquor Commission with regard to a proposed closing.

In the opinion of this Office, such power is advisory only. This is not only apparent from the face of the quoted provision itself, but would be required by the Maine Constitution. As this Office has observed on several occasions, the Legislature may only effect administrative actions through the normal legislative procedure of passage of legislation by a majority vote of both Houses and approval by the Governor. See, e.g., Op. Me. Att'y. Gen. 83-5; Op. Me. Att'y. Gen. 76-215. Thus, if the Legislature were to attempt to vest in the Joint Standing Committee on Legal Affairs the power to prevent the closing of a State liquor store by the State Liquor Commission, such a provision would violate the provisions of the Maine Constitution, art. IV, pt. 3, governing the enactment of legislation. There is, of course, nothing unconstitutional with the Legislature directing the Committee to hold a public hearing on a proposed closing and to advise the Commission of its views. The Legislature may not, however, mandate that those views be binding.

I hope this answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Sen. Richard R. Charette
Rep. Harold R. Cox
Chairman, Joint Standing Committee on Legal Affairs