

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



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

March 5, 1984

Honorable John C. Bott  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Representative Bott:

You have inquired into the constitutionality of a procedure employed by the University of Maine in selling alcoholic beverages to persons over the age of twenty. Specifically, your inquiry is whether it violates the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section 6-A of the Maine Constitution for the University to sell alcoholic beverages only to those persons who possess a State of Maine driver's licenses or a State-issued identification cards which indicate that they have passed their twentieth birthdays. For the reasons which follow, it is the Opinion of this Department that such a procedure is not unconstitutional.

As you have explained it, the University of Maine at Orono sells alcoholic beverages at various places on the campus to students and others. Since State law prohibits the selling of such beverages to persons under the age of twenty, 28 M.R.S.A. § 303, and since the University has a large population of persons of approximately that age, it has established a policy that any person seeking to purchase alcoholic beverages from it provide documentary proof that he or she is over the age of twenty. This requirement may be most easily satisfied by the presentation of a driver's license issued by the State of Maine. Many of the students attending the University, however,

are not residents of the State of Maine, and therefore are not eligible to obtain Maine drivers' licenses. Although these students may have such licenses in other jurisdictions, it is apparently the case that such licenses may easily be altered, or, in the case of jurisdictions which do not, like Maine, require a photograph of the licensee, simply be borrowed for the purpose of persuading a University employee that the person in question is over twenty years of age. For nonresident students, therefore, the University has adopted a policy whereby it will only sell alcoholic beverages to a person not possessing a Maine driver's license if that person obtains and presents an identification card issued by the Office of the Secretary of State, through its Motor Vehicle Bureau. Your question is whether this policy of discrimination between nonresidents having such an identification card and those not having such a card violates the Equal Protection Clauses.

As the United States Supreme Court has recently stated:

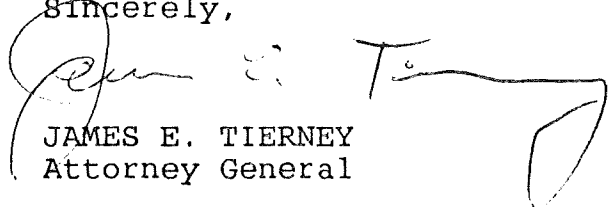
[If the challenged provisions do not] adversely affect a fundamental interest, or contain a classification based upon a suspect criterion, they need only be tested under the lenient standard of rationality that this Court has traditionally applied in considering equal protection challenges to regulation of economic and commercial matters. Under that standard a statute will be sustained if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose. Exxon Corp. v. Eagerton, 51 U.S.L.W. 4700, 4705, (June 8, 1983) (citations omitted).

Since the discrimination here - between nonresident students holding State-issued identification cards and those not holding such cards - is not based upon a suspect criterion (such as race), and since the right to purchase alcoholic beverages is not a fundamental one (such as the right to freedom of speech, or to participation in the political process), the University's policy is constitutional so long as it promotes a legitimate State purpose. As indicated above, the purpose behind the policy is to ensure that sales of intoxicating beverages to students and others on the campus are not made to persons under the age of twenty, in the context of a situation in which attempts at falsification of proof of age are common. Under these circumstances, it would appear to this Department that it is not irrational for the University to require that

nonresidents obtain some form of identification which the University could be certain cannot be altered or borrowed, and produce such identification when seeking to purchase alcoholic beverages. The identification card system developed by the Secretary of State would appear to reasonably satisfy this need. Thus, the University's policy is not unconstitutional.

I hope the foregoing is helpful to you. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Hon. Patrick McCarthy  
Chancellor, University of Maine