

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

June 8, 1984

The Honorable James R. Handy
House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Handy:

Your letter of May 7, 1984 inquired "whether the State Liquor Commission has the legal authority to close its Hallowell warehouse and utilize a privately-owned warehouse to store its wine and liquor." For the reasons which follow, it is the opinion of this Department that the Commission does possess the authority to close the Hallowell facility and may license private persons who directly supervise and control warehouses in the state to import and/or store wine and liquor prior to the assumption of ownership over these goods by the State.

The structure of the liquor business in the State of Maine is set forth in Title 28 of the Maine Revised Statutes. The parts pertinent to your question (dealing with transportation and distribution) can be summarized as follows. "Liquor" comprises all alcoholic beverages, and is more fully defined in 28 M.R.S.A. § 2(9). For purposes of regulation, the statutes define two general categories of liquor: (1) malt liquor and table wine; and (2) "spirits" (essentially meaning "hard liquor" and defined in 28 M.R.S.A. § 2(16)). Malt liquor and table wine may be imported, stored, and sold by any person so long as he possesses the necessary licenses from the Commission. Therefore, there is no question as to the

legitimacy of importation and storage of malt liquor and table wine by private licensees. Spirits, however, may be sold only through State-operated or special agency stores. The question of the importation and storage of spirits is, therefore, the subject of your inquiry.

Generally, there are two sources of spirits sold in Maine: in-state manufacturers (licensed under 28 M.R.S.A. § 501) and out-of-state manufacturers and wholesalers. A Section 501 license allows in-state manufacturers of spirits to sell their products only to the Commission, out-of-state purchasers and other licensed Maine manufacturers. Out-of-state manufacturers and wholesalers of "spirits" may bring their goods into the State in one of two ways: they may sell directly to the Commission for resale, or, if they obtain a certificate of approval from the Commission under 28 M.R.S.A. § 604, they may import their goods directly into "special warehouse storage facilities." Only the Commission may withdraw spirits from the special warehouse storage facilities for sale within the State (28 M.R.S.A. § 604).

Within this statutory structure, the Liquor Commission informs us that the importation and storage of spirits is currently accomplished in the following way. Spirits are either shipped into "special warehouse storage facilities" which are under the direct supervision and control of certificate of approval holders and withdrawn by the Commission under Section 604, or shipped directly into the Commission-operated Hallowell warehouse. In the former case, the Commission takes title when the goods leave the special warehouse; in the latter case, the Commission takes title FOB point of shipment. Pursuant to this statutory structure, the Commission advises us that approximately 40% of all spirits sold in Maine now pass through Fore River Warehousing and Storage Co., Inc. in Portland ("Fore River"). A small amount of spirits are now shipped directly to York Bottling Co., Inc. in Biddeford ("York"), which is also certified under Section 604. The remainder is shipped to the Hallowell warehouse.

The Commission has proposed ceasing operations at its Hallowell warehouse. The rationale for this decision is cost savings accruing to the State. (For a more complete description of the policy issues involved, see Me. Governor's Management Task Force, Proposal/Conversion to Bailment Warehousing/Alcoholic Beverages (April 5, 1984)). Letters were transmitted to all manufacturers/wholesalers advising them of the change (a copy of a representative letter, to Almaden Vineyard, Inc., dated May 17, 1984, is attached hereto as Attachment 1). The Commission intends that private warehouses

licensed under Section 604 would conduct the operation of "breaking down" shipments from stock already stored at the warehouse and stock brought to the warehouse from other warehouses for consolidation, and transferring stock to the Commission's vehicles for intra-state shipment.

The Commission purchases a small amount of spirits directly from manufacturers at a discount (called "post-off sales"). Other than these post-off goods, the Commission is proposing to own none of the spirits stored at private warehouses, but would take title only when such goods are withdrawn for shipment in the intra-state distribution system. Storage charges and warehousing agreements would be directly negotiated between manufacturers/wholesalers and the warehouses they choose to use.

In light of this legal and factual structure, your inquiry breaks down into two questions. First, does the Commission have the statutory power to cease its warehouse operations in Hallowell? Second, may the Commission permit the licensees who directly supervise and control "special warehouse storage facilities" to import spirits, or store spirits imported by someone else, preparatory to the assumption of ownership of the goods by the Commission?

I. Commission Power to Close Hallowell Warehouse.

The power of the Commission to operate warehouses is governed by 28 M.R.S.A. § 151, which states: "the Commission is authorized to lease . . . warehouses . . .," and goes on to say "the state warehouses . . . shall be located in places designated by the commission" In order to understand them fully, these provisions must be read against their legislative history.

In 1953, the first sentence of 28 M.R.S.A. § 151 existed in the same form as it currently appears, authorizing the Commission "to lease . . . warehouses." Indeed, at that time, the Commission did lease a private warehouse in Portland, separate from the Commission's office in Augusta. Me. Legislative Research Committee, Third Report to Ninety-Sixth Legislature, Liquor 21-22 (January, 1953) [hereinafter cited as "Committee Report"].

However, in 1952 and 1953 there occurred a series of scandals involving the State Liquor Commission (see, generally, 1953 Me. Laws 986-987 (Inaugural Address of Governor Burton M. Cross)); Committee Report; Me. Dept. of Atty. Gen. Report on

Special Investigations (August, 1953)). The aforementioned Legislative Research Committee "was directed [by the 95th Legislature] to make a study of the operations of Maine's liquor monopoly--its administration and over-all operations" (Committee Report at 1).

Paragraph 9 of the Committee's findings regarding "Administration" reads as follows:

9. Location of Warehouse Building

The committee feels that the supervisory duties of the state liquor commission would be more readily handled if the commission offices were located near the liquor warehouse. We are advised that the net rental paid for the warehouse in Portland is \$19,416.43 a year, and that the rental paid for the wholesale store in Portland is \$3,000 a year. A suitable warehouse building would fulfill both functions. We therefore recommend a state-owned warehouse in Augusta. (Report at 21-22).

Having this Committee Report in hand, the Legislature added the present second sentence of 28 M.R.S.A. § 151, referring to a "state warehouse."^{1/} The legislative debate on the amendment is clear that the purpose was to make it possible for the Commission to move its pre-existing warehouse to the Augusta area, if it so chose. See Legis. Rec. 2264 (1953) (statement of Rep. Fuller); 2265 (statement of Rep. Anderson). The statute did not, however, expressly require the Commission to maintain any warehouse at all, although, as a practical matter, the Commission was obliged to, since, as will be seen below, there was no provision in the statutes at the time permitting privately-owned warehouses for spirits to exist. Thus the only alternative open to the Commission to stock state-operated or state agency stores with imported spirits would have been to transport such goods directly from manufacturers or out-of-state warehouses to each such store. Nonetheless, Section 151 contained no mandate that any state-owned warehouse exist. It merely authorized the Commission to operate one, at a place of its choosing. Therefore, since the Commission is under no legal obligation to

^{1/} P.L. 1959, ch. 274, § 7 made "warehouse" plural.

operate a warehouse, it may close any warehouse which it may be operating, such as the one in Hallowell, at any time.^{2/}

II. Commission Power to Permit Importation of Spirits into Private Warehouses.

As indicated above, at the time of the 1953 amendments to the Maine liquor laws, there was no provision for the importation of spirits into the State to privately-owned warehouses. Such importation would therefore have been prohibited by 28 M.R.S.A. § 1052.^{3/} In 1982, however, the Legislature enacted the following language, inserting it into 28 M.R.S.A. § 604:

Notwithstanding the importation restrictions of sections 1051 and 1052, the commission may issue certificates of approval authorizing the direct importation of malt liquors, table wines or spirits from suppliers located in foreign countries or states into special warehouse storage facilities located within this State that

^{2/} A subsidiary question on this point is whether the closure of the Hallowell facility would violate any collective bargaining agreement. The agreement between the State of Maine and the Maine State Employees Association, dated May 1, 1982, governs all State employees affected by the proposed closure. The pertinent parts of that agreement are appended hereto as Attachment 2. In the view of this Department, this agreement would not be violated by the closure. The relevant sections of the agreements quoted in the attachment clearly show that the State has not bargained away its right to contract out work or eliminate state employees' positions as a result thereof (see especially Article LIX). When the State's action does force state employees to be laid off, the State must "negotiate the impact of the contracting on the affected employees" (Article XLI). If a negotiation demand were made under Article XLI, proceedings would continue in the negotiation forum, but such a demand could not prevent the layoff of the employees.

^{3/} 28 M.R.S.A. § 1052 states, in pertinent part:

No person, other than the commission, shall import spiritous . . . liquor into this state, . . .

are under the direct supervision and control of the certificate holder.

* * * *

Spirits may be withdrawn from special warehouse storage facilities by the State Liquor Commission.

This provision would appear to have significantly altered the legal structure governing the transportation of spirits into and within the State. Whereas formerly such goods could be imported into and stored only at State-operated warehouses, they may now be brought into privately-owned "special warehouse storage facilities," so long as the persons directly supervising and controlling such facilities possess a "certificate of approval" from the Commission. In fact, such certified importation and storage has begun to occur. Following the passage of the 1982 amendments, the Commission issued certificates of approval to the owners of Fore River and York, with the result, as indicated above, that Fore River quickly became the initial repository of approximately 40% of all spirits imported into Maine. In short, the 1982 amendments made it no longer a practical necessity for the Commission to maintain its own warehouse. Private warehouses are now authorized to receive imported spirits so long as they are directly supervised and controlled by a certificate of approval holder.

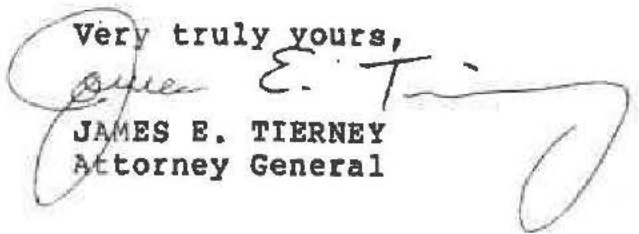
In reaching this interpretation of the amended Section 604, this Department is not unmindful of the fact that the first sentence of the amendment quoted above appears to contemplate that importation of spirits into special warehouse storage facilities may occur only "under the direct supervision and control of the certificate holder." (emphasis added). Thus, it might be argued, while the operator of a "special warehouse storage facility" might be able to import spirits to his warehouse himself, his facility might not be able to be utilized by any other importer. This Department does not think, however, that the Legislature may be found to have intended to treat the two methods of importation (importation by a warehouse, or importation to a warehouse by a third party) differently simply because it chose to use the definite article in this sentence in identifying the person who must hold the certificate of approval. Rather, it is our view that the Legislature meant to authorize the importation of spirits by any person, so long as such importation is made to a special warehouse storage facility which is directly supervised and controlled by a certificate of approval holder. This interpretation is consistent with the practice which has developed subsequent to the amendment and finds support in the fact that the scope of the prohibition from which the sentence

creates an exemption includes the separate functions of importing and warehousing. 28 M.R.S.A. §§ 1051, 1052.^{4/}

* * * *

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

Very truly yours,


JAMES E. TIERNEY
Attorney General

JET/ec

cc: Guy Marcotte
Maine Liquor Commission

^{4/} The Department is also not unaware of the Statement of Fact to Legislative Document 1936, which contained the 1982 amendments to Section 604. That Statement, in its entirety, states:

This bill allows the Bureau of Alcoholic Beverages to license special state import warehouses for liquors. Liquor enters this country from most foreign countries by ship and at present all ports of entry are located south of the State of Maine. The importation will still remain under rigid control and should provide some employment for the State, as well as provide some taxable real estate in some area.

It is anticipated that passage of this bill would increase revenues by \$12,000 a year. L.D. 1936, Statement of Fact (110th Legis. 1982).

From reading this Statement alone, one might come to the conclusion that the amendment in question was concerned with importation into Maine of spirits solely from foreign countries. Such a conclusion would be inconsistent, however, with the text of the amendment itself, which refers to importation "from suppliers located in foreign countries or states." (emphasis added). It is a well-established rule of statutory construction that the plain language of a statute prevails over any inconsistent legislative history. Jones v. Petit, No. 3473, slip op. at 5 (Me. Apr. 5, 1984); Terry v. St. Regis Paper Co., 459 A.2d 1106, 1109 (Me. 1983); Concord General Mutual Ins. Co. v. Patrons-Oxford Mutual Ins. Co., 411 A.2d 1017, 1020 (Me. 1980).

Bureau of Alcoholic Beverages

A DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION



MAILING ADDRESS: STATE
HOUSE, AUGUSTA, MAINE 04330
LOCATED AT 10-12 WATER STREET,
HALLOWELL, MAINE 04347
207-289-3721

May 17, 1984

Almaden Vineyard, Inc.
1530 Blossom Hill Road
San Jose, California 95118

Attention: Michael Pendergast, Vice President
National Sales Manager-Control States

Dear Mr. Pendergast:

Following an extensive study, the Maine Governor's Management Task Force, in its report to the Governor dated April, 1984, strongly recommended the State convert to bailment warehousing.

On April 30, the Maine State Liquor Commission unanimously voted to implement the Task Force recommendation as expeditiously as possible.

Accordingly, this letter is to notify you that the Bureau of Alcoholic Beverages will not receive inbound merchandise at its Hallowell warehouse after June 15, 1984. Outbound shipments from this facility will terminate and operations will cease as of June 30, 1984.

Until further notice, shipments to stores will originate from Fore River Warehousing and Storage Co., Inc., 217 Read Street, Portland, Maine 04103.

This facility has been designated as the consolidation point for store shipments due to the large number of distillers already having stock at the location. However, you may elect to ship from other storage facilities for arrival at the Fore River dock for same-day consolidation into outbound store loads, or to warehouse at Fore River.

Information regarding these alternatives is available directly from Fore River at the above address or by telephone 207-772-4653.

Our intention is to minimize orders between now and the date of full bailment in order to reduce State warehouse inventories as much as possible prior to closing. Please take the necessary steps to insure adequate inventories of your codes. Merchandise should be readily available from bailment no later than June 15, 1984.

Revised price quotations should be forwarded no later than June 1, 1984 to be effective June 15, 1984. The basic affirmation price should be reflected on Line 11 with freight and bailment charges on Line 12B of the Revised Price Quotations.

Please do not hesitate to contact the Bureau of Alcoholic Beverages if we can do anything to assist your transition to bailment. With your cooperation, I am sure implementation of this program can be accomplished smoothly and quickly without disruption of business.

Very truly yours,

Guy A. Marcotte
Guy A. Marcotte
Director

GAM:nha

Administrative Services Bargaining Agreement.^{2/}

Article XXVI

B. Layoffs

When an appointing authority determines that a reduction in force is necessary, he/she shall determine the positions within each organizational unit which are to be abolished. . . .

Article XLI.

Unit Work.

If the State contracts out work normally performed by employees within this unit, and if the contracting out results in the elimination of jobs within the unit, the State will negotiate the impact of the contracting on the affected employees. Negotiations, if demanded, will occur no longer than a thirty (30) day period prior to implementation of the lay off. If the parties have not reached agreement within the thirty (30) day period, the obligation to bargain shall continue.

In addition, the State shall assist those employees whose jobs are eliminated by such actions to find other employment. The resources of the Department of Personnel, the Department of Labor and the affected department shall be used in coordination with MSEA to help the affected employees secure employment inside or outside of state government. When an employee receives notice that he/she is being displaced as a result of contracting out, the State and MSEA will exchange information on vacancies which can be useful in assisting the affected employee find employment. Appropriate preference shall be given affected employees for placement in state service.

^{2/}Similar language is found in the Supervisory Services and Operations and Maintenance Support Services Bargaining Units.

Article LIX.

Management Rights

The MSEA agrees that the State has and will continue to retain the sole and exclusive right to manage its operations and retains all management rights, whether exercised or not, unless specifically abridged, modified or delegated by the provisions of this Agreement. Such rights include but are not limited to: the right to determine the mission, location and size of all agencies and facilities; the right to direct its work force; to administer the merit system; to establish specifications for each class of positions and to classify or reclassify and to allocate or reallocate new or existing positions in accordance with the law; to discipline and discharge employees; to determine the size and composition of the work force; to eliminate positions; to make temporary layoffs at its discretion; to contract out for goods and services; to determine the operating budget of the agency; to install new, changed or improved methods of operations; to relieve employees because of lack of work or for other legitimate reasons; to maintain the efficiency of the government operations entrusted to them; and to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.