

MAINE STATE LEGISLATURE

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N I N E T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 1553

S. P. 558

In Senate, May 2, 1957.

Reported by Senator Silsby of Hancock from Committee on Judiciary and printed under joint rules No. 10.

CHESTER T. WINSLOW, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT Creating Office of Hearing Examiner under Liquor Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 61, § 56, sub-§ I, repealed and replaced. Subsection I of section 56 of chapter 61 of the Revised Statutes, as amended by section 13 of chapter 355 of the public laws of 1955, is hereby repealed and the following enacted in place thereof:

1. There is hereby created the office of hearing examiner for the State Liquor Commission to be appointed by the Governor, by and with the advice of the Council, for a term of 4 years. The hearing examiner shall be an attorney-at-law duly admitted to practice before the courts of Maine. He may be removed from office by the Governor for misfeasance, malfeasance and nonfeasance in office. He shall receive an annual compensation to be set by the Governor and Council and shall be entitled to actual and necessary expenses in the performance of his duties. The hearing examiner shall conduct hearings on all matters concerning violations of licenses of any law relating to alcoholic beverages or infractions of any rule or regulation issued by the State Liquor Commission after notice of such violation or infraction has been reported to him on a signed complaint by a duly designated enforcement officer of said Commission. The hearing examiner shall thereupon notify the licensee by serving on him a copy of the complaint and a notice stating the time and place of hearing and that he may appear in person or by counsel at the hearing. Service of such complaint and notice shall be sufficient if sent by registered mail to the address given by the licensee at the time of his application for a license, 7 days at least before the date of hearing. The hearing examiner shall thereupon conduct a hearing limited to the facts and law,

and rules and regulations of the State Liquor Commission as specified in said complaint.

The hearing examiner is authorized to subpoena and examine witnesses and to administer oaths. In the conducting of hearings no hearsay testimony shall be admissible and the licensees named in the complaint shall have the right to have all witnesses testify in person at the hearing. The hearing examiner shall state in writing his findings and decision in each case, based upon the facts and the law, and the rules and regulations of the State Liquor Commission. Said findings shall specify the facts found and the law, rules or regulations found to be violated.

The hearing examiner shall conduct hearings in such designated place or places as may be most convenient and economical for all parties concerned in said hearing.'

Sec. 2. R. S., c. 61, § 56, sub-§ II, amended. Subsection II of section 56 of chapter 61 of the Revised Statutes is hereby amended to read as follows:

II. Licenses may be revoked or suspended ~~at the discretion of the commission~~ by the hearing examiner for the following causes:

- A. Violation of any law relating to alcoholic beverages or substantial infraction of any rule or regulation issued by the Commission;
- B. Knowingly making a false material statement of fact in the application for the license;
- C. Knowingly making inaccurate and misleading statements as to brands or labels; giving of rebates to a customer for the purpose of influencing a sale;
- D. Making sales to persons under age as prohibited by law, except that licensees selling to minors furnishing fraudulent proof of age ~~as provided by subsection 4~~ may be held not administratively liable ~~at the discretion of the commission~~ by the hearing examiner;
- E. Making sales after the permitted hours of sale;
- F. Making sales on Sunday;
- G. The making of sales by hotels, clubs and restaurants for off the premises consumption;
- H. Making sales of spirituous or vinous liquor on the day of the holding of a general election or state-wide primary;
- I. Conviction of violation of any law of the United States relating to the manufacture, possession, transportation or sale of intoxicating liquor;
- J. Conviction of violation of any law of the United States relating to carrying on the business of a wholesale or retail dealer without a federal tax stamp;

K. Conviction of the violation of the provisions of section 32 of the United States liquor taxing act of 1934 relating to having in possession distilled spirits in unstamped containers;

L. Transferring, assigning or hypothecating a license; and

M. Failure to have and maintain throughout the entire license period all of the requirements of definitions, laws, rules and regulations, necessary to qualify for a license. For this particular offense the ~~commission hearing examiner~~ shall be authorized to suspend licenses for an indefinite period of time until it is satisfied that the licensee has conformed to all qualifications required for licensing.'

Sec. 3. R. S., c. 61, § 56, sub-§ III, amended. Subsection III of section 56 of chapter 61 of the Revised Statutes is hereby amended to read as follows:

'**III.** Whenever violations by licensees occur in one year's license period and remain undiscovered or carry over into the next license year pending investigation or final disposition either in criminal courts or before the ~~commission hearing examiner~~, any license issued subsequent to violation for a new license year may be suspended or revoked by the ~~commission hearing examiner~~.'

Sec. 4. R. S., c. 61, § 56, sub-§ IV, amended. Subsection IV of section 56 of chapter 61 of the Revised Statutes is hereby amended to read as follows:

'**IV.** Whenever it appears to the ~~commission hearing examiner~~ that a violation by a licensee is technical only, wholly unintentional and not careless, or that any penalty at all would be too harsh and unreasonable in the light of the offense committed, ~~if~~ he may send the offending licensee a warning ~~in lieu of ordering him to appear for hearing or upon hearing~~ may place the case on file or suspend the operation of a suspension.'

Sec. 5. R. S., c. 61, § 56, amended. The next to the last paragraph of section 56 of chapter 61 of the Revised Statutes is hereby amended to read as follows:

'In cases of ownership, direct or indirect, in more than one license, suspensions shall apply only to the premise where the violation occurs. The ~~commission hearing examiner~~ may order that a revocation shall apply to any premises in which the licensee is, directly or indirectly, interested.'

Sec. 6. R. S., c. 61, § 56-A, additional. Chapter 61 of the Revised Statutes is hereby amended by adding thereto a new section to be numbered 56-A, to read as follows:

'**Sec. 56-A. Appeal.** A full and complete record shall be kept of all proceedings had before the hearing examiner on the revoking and suspending of any license issued by the Commission.

If any person is aggrieved by the decision of the hearing examiner in revoking or suspending any license issued by the Commission, he may within 10 days thereafter appeal to the Commission by presenting to it a petition therefor. The Commission shall forthwith fix a time and place for immediate hearing; and after hearing, the Commission may affirm, modify or reverse the decision of the hearing examiner. Pending judgment of the Commission, the decision of the hearing examiner in revoking or suspending any license shall remain in full force and effect.'