

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

T. For limitations upon the exercise of the powers conferred upon the authority by this chapter;

U. For the issuance of these bonds in series or in serial form or for a stated term of years with or without mandatory retirements from a sinking fund or otherwise;

V. For the issuance, in addition to the issuance of notes and other evidences of indebtedness or obligations authorized under this chapter, of notes in anticipation of authorized bonds and for the exercise with respect to the bond anticipation notes of any or all of its powers delineated in this chapter for the issuance of bonds; and

W. For the performance by the authority of any acts and things necessary or convenient or desirable in order to secure its bonds or in the absolute discretion of the authority as will tend to make the bonds more marketable notwithstanding that those acts or things may not be enumerated in this chapter.

See title page for effective date.

CHAPTER 139

H.P. 397 - L.D. 532

An Act to Restrict the Use of Eminent Domain Power

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

Sec. 1. 5 MRSA §6207-A, as amended by PL 1993, c. 728, §11, is further amended to read:

§6207-A. Use of eminent domain

The board may expend funds to acquire an interest in land obtained by the use of eminent domain only if the ~~expenditure or~~ acquisition has been approved by the Legislature or is with the consent of the owner or owners of the land, as the identity and address of the owner or owners is shown on the tax maps or other tax records of the municipality in which the land is located. If the land is located within the unorganized territory, for purposes of this section the identity of the owner or owners must be as shown on the tax maps or other tax records of the State Tax Assessor.

See title page for effective date.

CHAPTER 140

S.P. 281 - L.D. 753

An Act to Correct and Clarify Certain Provisions of the Liquor Laws

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

Sec. 1. 5 MRSA §10051, sub-§3, as repealed and replaced by PL 1985, c. 748, §4, is amended to read:

3. Appellate jurisdiction. The Administrative Court ~~shall have~~ has exclusive jurisdiction to review disciplinary decisions of occupational licensing boards and commissions taken pursuant to Title 10, section 8003 and licensing decisions of the Bureau of Liquor Enforcement taken pursuant to Title 28-A, sections 453-A, 458 and 653. The Maine Administrative Procedure Act, chapter 375, subchapter VII, ~~shall govern~~ governs these proceedings as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 2. 28-A MRSA §62-A, sub-§5, as enacted by PL 1993, c. 730, §21, is amended to read:

5. Act as a review board. Act as a review board on all appeals from the decisions of municipal officers. The bureau shall appoint a hearings officer to conduct appeal hearings. Except as provided in section 805, the decision of the chief is final. The hearings officer for the bureau is the Director of the Liquor Licensing and Tax Division.

The hearings officer may conduct hearings in any licensing matter pending before the bureau. The hearings officer shall, after holding the hearing, file with the bureau all papers connected with the case and report the findings to the ~~director~~ chief. The ~~director~~ chief shall render a final decision based upon the record of the hearing.

The hearings officer may administer oaths and issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any license question in dispute before the bureau or to any matter involved in a hearing. Witness fees in all proceedings are the same as for witnesses before the Superior Court and must be paid by the bureau, except that, notwithstanding Title 16, section 253, the bureau is not required to pay the fees before the travel and attendance occur;

Sec. 3. 28-A MRSA §161-B is enacted to read:

§161-B. Local approval of bottle clubs

1. Application to local authorities. Prior to registration with the commission under section 161, an owner or operator of a bottle club must apply to the municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, for permission to operate the bottle club or for transfer of location of an existing bottle club. The commission shall prepare and supply application forms.

2. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located shall hold a public hearing for the consideration of applications for new bottle clubs and applications for transfer of location of existing bottle clubs. The municipal officers or the county commissioners shall provide public notice of a hearing held under this section. The notice, at the applicant's prepaid expense, must state the name and place of the hearing and must appear for at least 3 consecutive days before the date of the hearing in a daily newspaper having general circulation in the municipality or unincorporated place where the bottle club is located or for 2 consecutive weeks before the hearing date in a weekly newspaper having general circulation in the municipality or unincorporated place where the bottle club is located.

3. Findings. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. An application may be denied on one or more of the following grounds:

A. Conviction of the applicant of any Class A, Class B or Class C crime;

B. Noncompliance of the bottle club with any local zoning ordinance or other land use ordinance not related directly to liquor control;

C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the bottle club and caused by persons patronizing or employed by the bottle club or other such conditions that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the bottle club to use their property in a reasonable manner;

D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law at or in the vicinity of the bottle club and caused by persons patronizing or employed by the bottle club;

E. A violation of any provision of this Title;

F. In the case of corporate applicants, ineligibility or disqualification under section 601 of any officer, director or stockholder of the corporation; and

G. Location of the bottle club at any amusement area, beach or other area designed primarily for use by minors.

4. Appeal to commission. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the commission. The commission shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the commission may consider all of the requirements referred to in subsection 3.

A. If the decision appealed is approval of the application, the commission may reverse the decision if it was arbitrary or based on an erroneous finding.

B. If the decision appealed is denial of the application, the commission may reverse the decision and register the bottle club under section 161 only if it finds by clear and convincing evidence that the decision was without justifiable cause.

5. Appeal to Superior Court. Any person or governmental entity aggrieved by a commission decision under this section may appeal the decision to the Superior Court.

Sec. 4. 28-A MRSA §653, sub-§1, ¶B, as amended by PL 1987, c. 623, §8, is further amended to read:

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least ~~6~~ 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or ~~on 2 consecutive weeks~~ one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

Sec. 5. 28-A MRSA §653, sub-§1, ¶¶C and D are enacted to read:

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing

on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph.

D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

Sec. 6. 28-A MRSA §653, sub-§3, as amended by PL 1993, c. 730, §27, is further amended to read:

3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause.

Sec. 7. 28-A MRSA §653, sub-§5, as amended by PL 1993, c. 730, §27, is further amended to read:

5. Appeal to Administrative Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the Administrative Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

Sec. 8. 28-A MRSA §2519, sub-§2, ¶B, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

B. A ~~representative of the Bureau of Liquor Enforcement~~ liquor enforcement officer;

See title page for effective date.

CHAPTER 141

H.P. 231 - L.D. 311

An Act to Clarify Professional Liability

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

Sec. 1. 13 MRSA §708, as enacted by PL 1969, c. 411, is repealed.

Sec. 2. 13 MRSA §708-A is enacted to read:

§708-A. Interpretation; liability

1. Relationship between a professional and a recipient of services. This chapter does not modify the liability of a person rendering professional service and a person receiving professional service.

2. Shareholder liability for debts and claims. Except as provided in subsection 3, the liability of shareholders for the debts of and claims against a professional corporation is the same as that of shareholders of a business corporation.

3. Shareholder liability arising from rendering professional service. A shareholder is jointly and severally liable for claims arising from the rendering of a professional service by a professional corporation if that shareholder:

A. Personally and directly participated in rendering that portion of a professional service that was performed negligently or in breach of any other legal duty; or

B. Supervised or controlled that portion of a professional service rendered by another person