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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL

Summary
of
Juvenile Tobacco Sales
Enforcement
1997

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TABLE OF CONTENTS

SCOPE.....	1
INSPECTIONS.....	1
RESULTS OF INSPECTIONS.....	1
RECOMMENDATIONS.....	2
ONGOING EFFORTS.....	3
CONCLUSIONS.....	4

APPENDIX

TABLE 1-RESULTS OF INSPECTIONS: JANUARY 1997.....	A1
TABLE 2 - RESULTS OF INSPECTIONS: JUNE-AUGUST 1997.....	A1
TABLE 3 - TOTAL INSPECTION/BUYS 1997.....	A1
CHART - TOBACCO RUI'S STATE OF MAINE.....	A2
CHART - JUVENILE TOBACCO SALES COMPLAINTS FILED.....	A2
TABLE 4 - COMPLAINTS FILED BY COUNTY: JANUARY 1997.....	A3
TABLE 5 - COMPLAINTS FILED BY COUNTY: JUNE-AUGUST 1997.....	A3
CHARTS - TOBACCO RUI'S BY COUNTIES 1997.....	A4 TO A8
TABLE 6 - JUVENILE TOBACCO SALE FINES: JANUARY 1997.....	A9
TABLE 7 - JUVENILE TOBACCO SALE FINES: JUNE-AUGUST 1997.....	A9
TABLE 8 - JUVENILE TOBACCO SALE FINES: TOTAL 1997.....	A10
CHART - JUVENILE TOBACCO SALES - FINES COLLECTED 1997.....	A11

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SCOPE:

Random, unannounced inspections of licensed tobacco outlets were conducted during January, June, July and August of 1997. The inspections were carried out pursuant to Maine's Juvenile Tobacco Law, 22 MRSA §1551 *et seq* and followed the Procedures and Protocols developed by the Department of the Attorney General. Agents of the Maine Sheriff's Association, working with volunteer underaged purchasers and adult supervisors recruited by local American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Project coalitions, the Bureau of Health, and the Office of Substance Abuse, conducted the inspections under contract with the Department of Human Services. The inspections were conducted to bring Maine into compliance with the federal Synar Amendment for 1996 and 1997. The Maine Office of Substance Abuse reported the results to the U.S. Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention (CSAP) pursuant to the requirements of the Substance Abuse Prevention and Treatment block grant.

INSPECTIONS:

The 451 outlets inspected during the first round in January 1997 and 478 additional outlets inspected during the second round in June, July, and August 1997 were chosen at random from those licensed by the Department of Human Services as required by 22 MRSA § 1551-A. Agents and volunteer underaged purchasers attended one day training sessions and were briefed on Procedures and Protocols developed by the Department of the Attorney General. Additional training was provided on how to complete reports, and also included role playing likely situations relating to inspections and testifying in court.

Agents and underaged purchasers were assigned areas and inspection schedules were developed among the participants. Inspections were completed and the Office of Substance Abuse reported results to CSAP.

RESULTS OF INSPECTIONS:

Of the 451 outlets inspected during January, tobacco products were procured by the underaged purchasers 76 times. During the June-August inspections, 60 purchases were completed at the 478 locations inspected. The "buy rate" for the inspections conducted in January was 17%. For the inspections conducted in June through August, the rate was 13%. Of the combined 929 inspections completed, the 136 buys amounted to an average buy rate of 14.6%.

The buy rates in January ranged from 56% to 0% (*see* Table #1 in appendix), while in the June through August period, they ranged from 50% to 0% (*see* Table #2 in appendix.) When the results of the second round of inspections are compared

with those of the first round, six counties (Franklin, Hancock, Knox, Lincoln, Sagadahoc, and York) had increased buy rates; seven counties (Androscogin, Kennebec, Penobscot, Piscataquis, Somerset, Waldo, and Washington) had decreased buy rates, while three counties (Aroostook, Cumberland and Oxford) stayed the same (see Tables 1 and 2 in appendix).

Whenever tobacco products were purchased, law enforcement officers working for the Maine Sheriff's Association and trained as tobacco control agents and under contract to the Department of Human Services issued Notices Of Civil Administrative Action. Both clerks and owners were issued notices pursuant to 22 MRSA § 1555(1)(A). Copies of the notices and reports were forwarded to the Department of the Attorney General and civil complaints were filed with the Administrative Court and/or warnings were issued to the violators.

Several recipients of notices complained of being entrapped. All such complaints were addressed and the Department of the Attorney General considered the circumstances of a given inspection when making the final decision as to whether to pursue a complaint, seek a reduced fine or issue a warning. These decisions were based on interviews with the underage purchasers and agents involved.

Of the 252 Complaints brought by the Department of the Attorney General representing the Department of Human Services, an agreement resulting in a consent decree being entered in favor of the state was reached in 235 of the cases. In the remaining 17 cases that were contested, one case was dismissed, one case was filed, seven judgments were issued in favor of the state, and eight remain to be scheduled for hearings in 1998. In 99% of the complaints filed, fines were paid and/or the defendant agreed to discontinue the sale of tobacco.

In addition to the fines collected, the Department of the Attorney General also accepted Consent Agreements permanently removing a number of cigarette vending machines from their locations. One retail license holder voluntarily surrendered their license and discontinued the sale of tobacco products.

RECOMMENDATIONS:

The overall program of tobacco inspections is successful but can be improved. There remains room for improvement on the quality of the reports submitted. Future training will stress that the more complete a report the better the chances are of reaching an out of court settlement or prevailing in court. Training must also continue to prioritize the adherence to the Procedures and Protocols as the best method for avoiding confrontational situations.

The Procedures and Protocols should be reviewed periodically and any insights gained from experience in the field incorporated. New training must continue to address situations to be avoided such as the use of young adults as observers that may confuse a clerk as to who is making the purchase. Training must continue to stress strict adherence to the protocols. It must also be clear that underaged purchasers involved in a buy may be required to testify in court.

ONGOING EFFORTS:

The Maine Department of Human Services' Bureau of Health, working with local community groups, will continue recruiting adults and underaged purchasers to participate in the inspections. In order to assure dedicated participants, an evaluation of program incentives (including the issue of compensation) should be ongoing. The Department of the Attorney General will not file complaints when inappropriate inspections occur. If the underaged purchaser is under 15 years of age, or a complete file on the underaged purchaser is not maintained, complaints will not be filed. Files kept on juvenile volunteers will need to be complete, including a copy of a birth certificate or other age documentation,¹ in order for the Department of the Attorney General to pursue complaints.

With funding from Congress it is anticipated that enforcement of the U.S. Food & Drug Administration(FDA) Tobacco Sales Rules, 21 CFR Part 897.14 (a) and (b), may be required. The FDA has indicated a willingness to work with the states in developing methods that will work effectively with local strategies. The FDA reviewed the results of pilot contracts in selected states prior to issuing Requests For Proposals to the rest of the states.

It is the consensus of all the Departments involved that inspections in Maine will be ongoing and that the public should be made aware of this. The Tobacco Prevention and Control Advisory Council, established in 22 MRSA § 271 *et seq* will advise the Bureau of Health on all components of the Tobacco Prevention and Control Program including the stated goal of increased law enforcement efforts.

The Department of the Attorney General also facilitated an agreement with the State's law enforcement organizations, and the courts, to distribute revenue recovered by fines imposed from tobacco violations. By statute 50% of these fines are to be returned to "law enforcement." The arrangement calls for the funds to be administered by the Maine Criminal Justice Academy. The funds will be used to further training and involvement of law enforcement officers with regard to tobacco and other substance abuse education and enforcement issues. The academy has formed a committee with representatives of the Maine Sheriff's Association, the

¹ Specifications included in the FDA's RFP for tobacco enforcement requires submission of birth certificates.

Maine Police Chiefs Association, the Department of Education and the Department of the Attorney General to oversee the account.

CONCLUSIONS:

The program of random, unannounced inspections is an important piece in the overall strategy of reducing tobacco use among young people. The underaged purchasers, adult volunteers, and agents performed extremely well under sometimes stressful conditions. Most civil actions initiated by the Department of the Attorney General were resolved quickly by negotiated Consent Orders. The rate of out of court settlements to date is over 96%. Hearings are currently being scheduled to resolve the outstanding contested Complaints.

The program is successful in its operation and in assessing penalties for violations. Recent changes to Maine law clarify what is expected of tobacco sellers. The requirement that sellers check identification of any person age 27 or younger makes for a clear determination of whether a violation has occurred.

One can finally conclude that an organized, adequately funded and credible enforcement program, when combined with education and advertising, will reduce the availability of tobacco products to and the demand for tobacco by underaged individuals.

APPENDIX

Table 1 - Results of Inspections-January 1997

County	Inspections	Retail	Vending	Buys	Percentage
Androscogin	28	23	5	7	25%
Aroostook	35	29	6	2	6%
Cumberland	97	67	30	12	12%
Franklin	17	14	3	2	12%
Hancock	19	19	0	3	16%
Kennebec	50	38	12	8	16%
Knox	13	13	0	1	8%
Lincoln	10	10	0	4	40%
Oxford	19	19	0	0	0%
Penobscot	50	44	6	16	32%
Piscataquis	8	8	0	2	25%
Sagadahoc	8	7	1	0	0%
Somerset	26	21	5	3	12%
Waldo	11	11	0	3	27%
Washington	16	16	0	9	56%
York	44	40	4	4	9%
Total	451	379	72	76	Average 17%

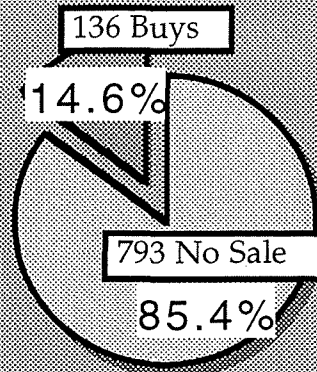
Table 2 - Results of Inspections-June-August 1997

County	Inspections	Retail	Vending	Buys	Percentage
Androscogin	34	28	6	0	0%
Aroostook	33	29	4	2	6%
Cumberland	92	65	27	11	12%
Franklin	16	13	3	2	13%
Hancock	22	20	2	4	18%
Kennebec	47	33	14	4	9%
Knox	15	14	1	3	20%
Lincoln	10	9	1	5	50%
Oxford	22	20	2	0	0%
Penobscot	55	48	7	3	5%
Piscataquis	10	10	0	2	20%
Sagadahoc	9	7	2	1	11%
Somerset	28	26	2	2	7%
Waldo	10	10	0	2	20%
Washington	18	17	1	8	44%
York	57	49	8	11	19%
Total	478	398	80	60	Average 13%

Table 3- Total Inspection/Buys 1997

	# Inspections	Retail	Vending	Buys	Percentage
January Inspections	451	379	72	76	17%
June/August Inspections	478	398	80	60	13%
Total	929	777	152	136	14.6%

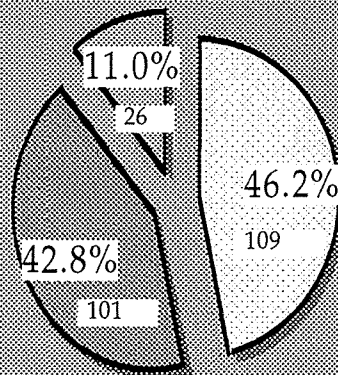
Tobacco RUI's State of Maine



Total 1997
929 Inspections

□ No Sale 85.4% ■ Buys 14.6%

1997 Juvenile Tobacco Sales Complaints Filed



□ Licensees 46.2%
■ Clerk's 42.8%
■ Vending 11.0%

Table 4 - Complaints Filed by County-January 1997

County	# Complaints Against Licensees	# Complaints Against Clerks	# Complaints Against Vending Premises
Androscogin	5	5	2
Aroostook	2	0	0
Cumberland	5	6	6
Franklin	2	2	0
Hancock	3	2	0
Kennebec	4	3	6
Knox	1	1	0
Lincoln	4	4	0
Oxford	0	0	0
Penobscot	13	13	2
Piscataquis	2	2	0
Sagadahoc	0	0	0
Somerset	2	2	0
Waldo	3	3	0
Washington	9	8	0
York	3	3	0
Total	58	54	16

Table 5 - Complaints Filed by County-June-August 1997

County	# Complaints Against Licensees	# Complaints Against Clerks	# Complaints Against Vending Premises
Androscogin	0	0	0
Aroostook	1	1	1
Cumberland	11	11	1
Franklin	1	1	1
Hancock	3	3	1
Kennebec	2	2	2
Knox	3	3	0
Lincoln	3	3	1
Oxford	0	0	0
Penobscot	2	2	1
Piscataquis	2	0	0
Sagadahoc	0	0	1
Somerset	2	2	0
Waldo	2	2	0
Washington	8	6	0
York	11	10	1
Total	51	46	10

Tobacco RUI's Androscoggin County 1997



January 1997 28 Inspections



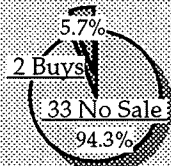
June-August 1997 34 Inspections



Total 1997 62 Inspections

☐ No Sale 88.7%
 ☐ Buys 11.3%

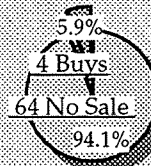
Tobacco RUI's Aroostook County 1997



January 1997 35 Inspections



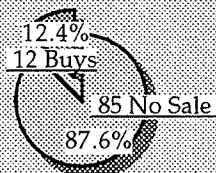
June-August 1997 33 Inspections



Total 1997 68 Inspections

☐ No Sale 94.1%
 ☐ Buys 5.9%

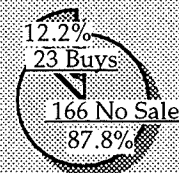
Tobacco RUI's Cumberland County 1997



January 1997 97 Inspections



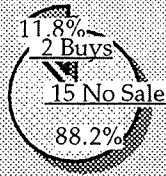
June-August 1997 92 Inspections



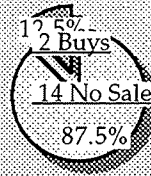
Total 1997 189 Inspections

☐ No Sale 87.8%
 ☐ Buys 12.2%

Tobacco RUI's Franklin County 1997



January 1997 17 Inspections



June-August 1997 16 Inspections



Total 1997 33 Inspections

☐ No Sale 87.9%
 ☒ Buys 12.1%

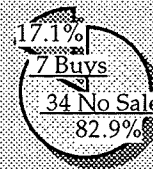
Tobacco RUI's Hancock County 1997



January 1997 19 Inspections



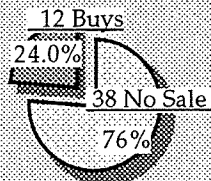
June-August 1997 22 Inspections



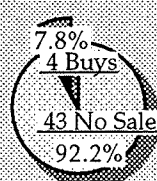
Total 1997 41 Inspections

☐ No Sale 82.9%
 ☒ Buys 17.1%

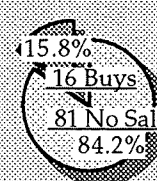
Tobacco RUI's Kennebec County 1997



January 1997 50 Inspections

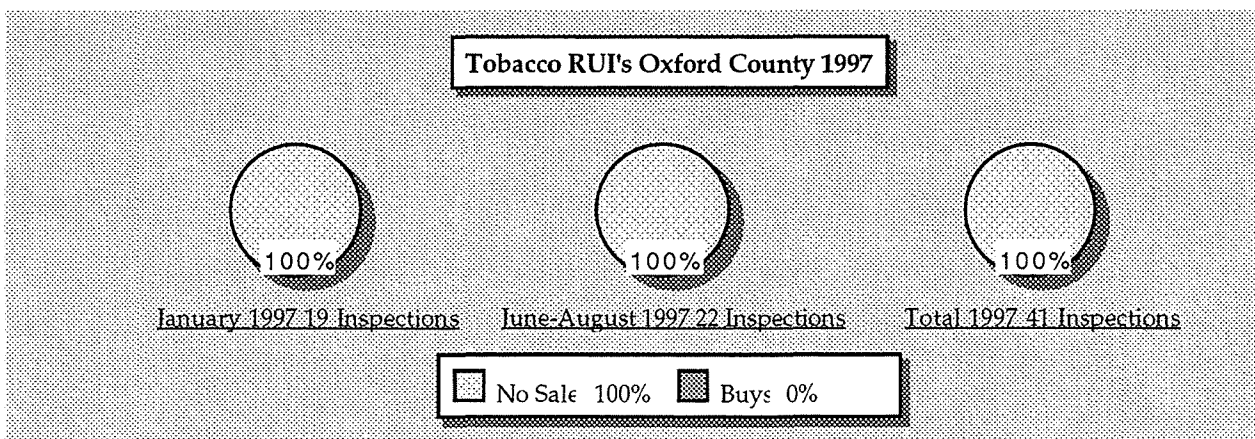
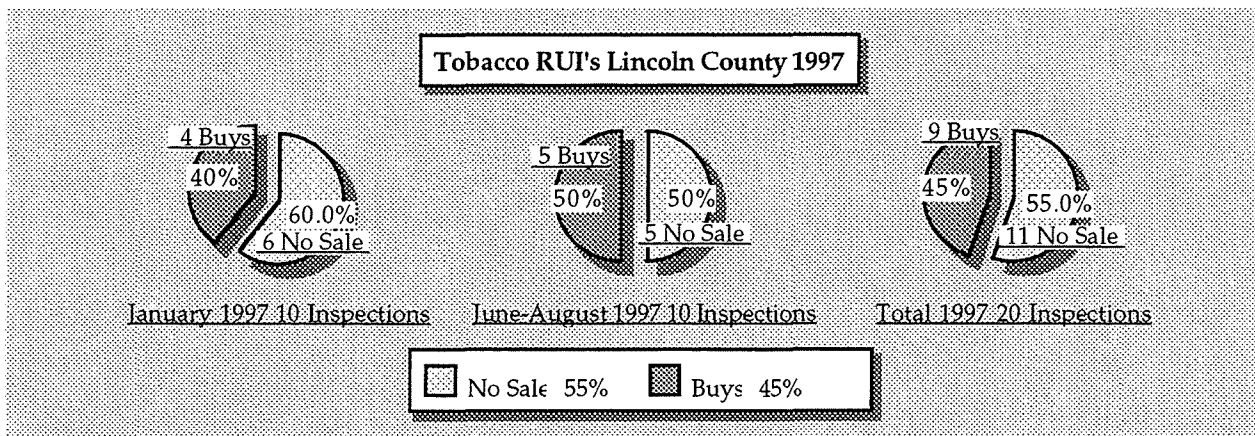
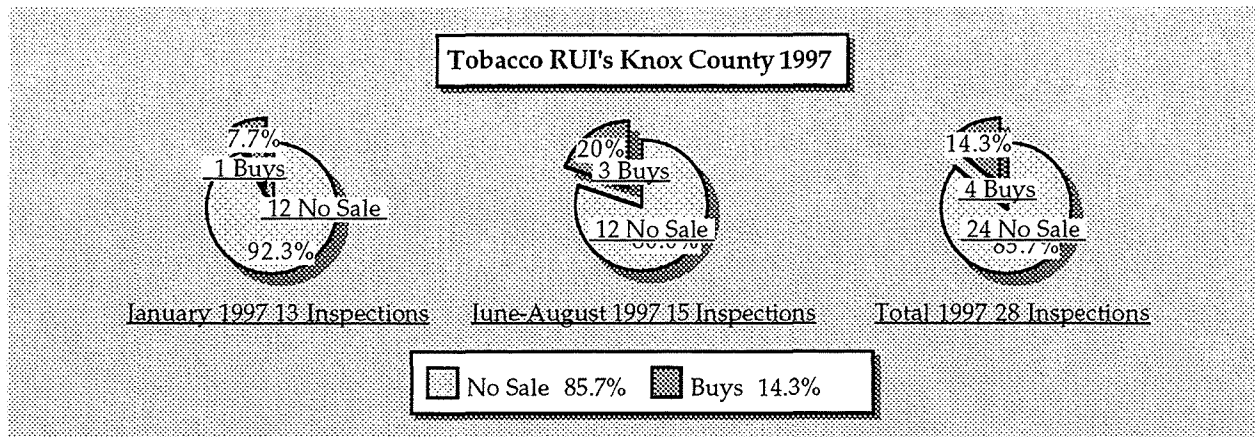


June-August 1997 47 Inspections



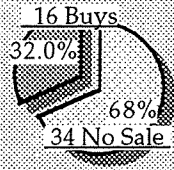
Total 1997 97 Inspections

☐ No Sale 84.2%
 ☒ Buys 15.8%

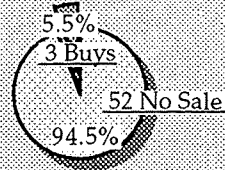


*Note: Oxford Police cited a violation that was not due to a Random Unannounced Inspection

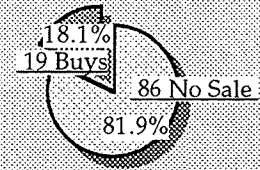
Tobacco RUI's Penobscot County 1997



January 1997 50 Inspections



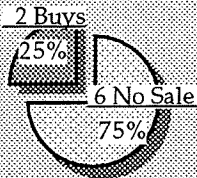
June-August 1997 55 Inspections



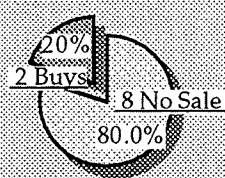
Total 1997 105 Inspections

No Sale 81.9% Buys 18.1%

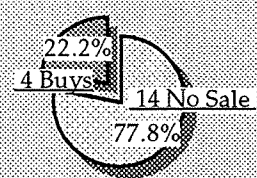
Tobacco RUI's Piscataquis County 1997



January 1997 8 Inspections



June-August 1997 10 Inspections



Total 1997 18 Inspections

No Sale 77.8% Buys 22.2%

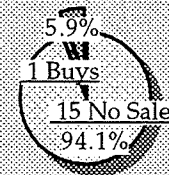
Tobacco RUI's Sagadahoc County 1997



January 1997 8 Inspections



June-August 1997 9 Inspections



Total 1997 17 Inspections

No Sale 94.1% Buys 5.9%

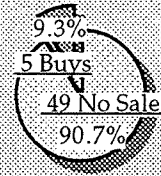
Tobacco RUI's Somerset County 1997



January 1997 26 Inspections



June-August 1997 28 Inspections



Total 1997 54 Inspections

No Sale 90.7% Buys 9.3%

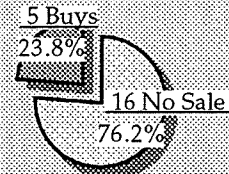
Tobacco RUI's Waldo County 1997



January 1997 11 Inspections



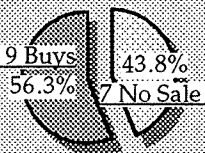
June-August 1997 10 Inspections



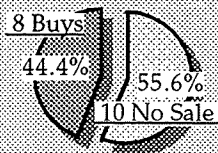
Total 1997 21 Inspections

No Sale 76.2% Buys 23.8%

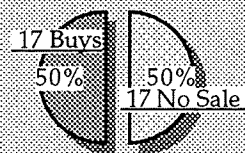
Tobacco RUI's Washington County 1997



January 1997 16 Inspections



June-August 1997 18 Inspections



Total 1997 34 Inspections

No Sale 50% Buys 50%

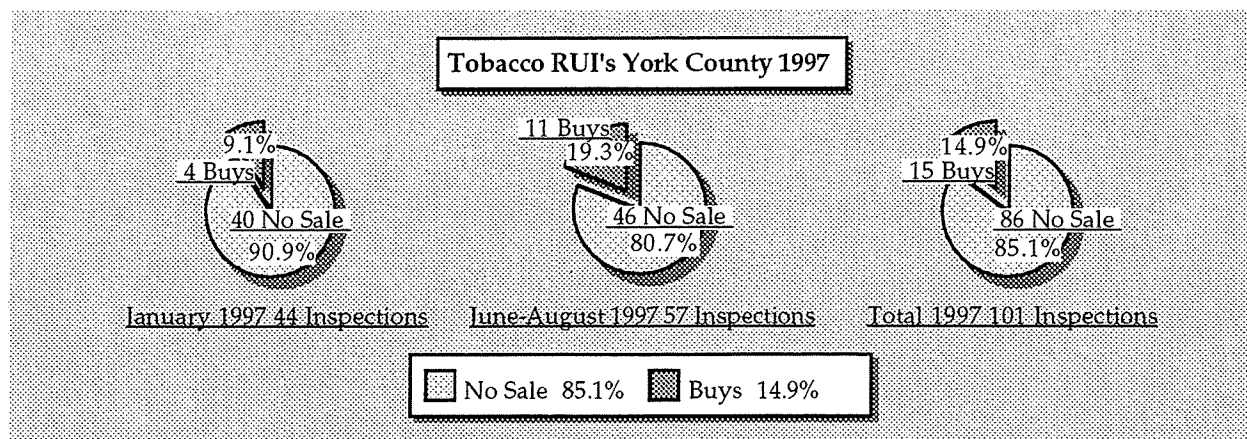


Table 6 -Juvenile Tobacco Sale Fines January-1997

County	Licensees	Clerk's	Vending	Total
Androscogin	\$1,000.00	\$300.00	\$200.00	\$1,500.00
Aroostook	\$200.00	\$0.00	\$0.00	\$200.00
Cumberland	\$1,000.00	\$250.00	\$600.00	\$1,850.00
Franklin	\$400.00	\$100.00	\$0.00	\$500.00
Hancock	\$400.00	\$150.00	\$0.00	\$550.00
Kennebec	\$800.00	\$150.00	\$400.00	\$1,350.00
Knox	\$200.00	\$50.00	\$0.00	\$250.00
Lincoln	\$800.00	\$200.00	\$0.00	\$1,000.00
Oxford	\$0.00	\$0.00	\$0.00	\$0.00
Penobscot	\$2,450.00	\$650.00	\$200.00	\$3,300.00
Piscataquis	\$400.00	\$100.00	\$0.00	\$500.00
Sagadahoc	\$0.00	\$0.00	\$0.00	\$0.00
Somerset	\$400.00	\$100.00	\$0.00	\$500.00
Waldo	\$400.00	\$100.00	\$0.00	\$500.00
Washington	\$1,600.00	\$350.00	\$0.00	\$1,950.00
York	\$600.00	\$150.00	\$0.00	\$750.00
Total	\$10,650.00	\$2,650.00	\$1,400.00	\$14,700.00

Table 7 -Juvenile Tobacco Sale Fines June-August-1997

County	Licensees	Clerk's	Vending	Total
Androscogin	\$0.00	\$0.00	\$0.00	\$0.00
Aroostook	\$0.00	\$0.00	\$100.00	\$100.00
Cumberland	\$2,200.00	\$600.00	\$100.00	\$2,900.00
Franklin	\$200.00	\$50.00	\$100.00	\$350.00
Hancock	\$600.00	\$150.00	\$100.00	\$850.00
Kennebec	\$400.00	\$100.00	\$250.00	\$750.00
Knox	\$600.00	\$100.00	\$0.00	\$700.00
Lincoln	\$800.00	\$150.00	\$100.00	\$1,050.00
Oxford	\$0.00	\$0.00	\$0.00	\$0.00
Penobscot	\$400.00	\$50.00	\$100.00	\$550.00
Piscataquis	\$300.00	\$0.00	\$0.00	\$300.00
Sagadahoc	\$0.00	\$0.00	\$0.00	\$0.00 *
Somerset	\$200.00	\$50.00	\$0.00	\$250.00
Waldo	\$400.00	\$100.00	\$0.00	\$500.00
Washington	\$1,400.00	\$250.00	\$0.00	\$1,650.00
York	\$1,700.00	\$450.00	\$0.00	\$2,150.00
Total	\$9,200.00	\$2,050.00	\$850.00	\$12,100.00

*Note: Vending machine removed in lieu of fine

Table 6-Juvenile Tobacco Sale Total Fines-1997

Inspection Round	Licensees	Clerk's	Vending	Total
January Inspections	\$10,650.00	\$2,650.00	\$1,400.00	\$14,700.00
June-August Inspections	\$9,200.00	\$2,050.00	\$850.00	\$12,100.00
Total	\$19,850.00	\$4,700.00	\$2,250.00	\$26,800.00

