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November 26, 1990

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Dear District Attorneys:

This letter is intended to provide the Opinion of this Department concerning the enforcement of the so-called Maine Sunday Sales Law, 17 M.R.S.A. § 3201, et seq., in the wake of the amendment of that law by initiated legislation at the general election earlier this month. As you know, violations of the Sunday Sales Law are criminal in nature, and thus may be enforced either by this office or by the appropriate District Attorney's Office. Since, however, by operation of 17-A M.R.S.A. § 4-A, violations of the Sunday Sales Law are Class E crimes, they have traditionally been enforced by the

District Attorneys' Offices. Nonetheless, this Department has been receiving numerous questions concerning the interpretation of the newly amended law since the election, and provides the following advice in order to ensure statewide consistency in its enforcement.

I. The Sunday Sales Law

The Sunday Sales Law derives from legislation passed by Maine's First Legislature in 1821, P.L. 1821, ch. IX. Essentially, it provides that: "No person, firm or corporation may, on the Lord's Day . . . [and certain specified holidays], keep open a place of business to the public, . . ." 17 M.R.S.A. § 3204. Since its enactment, the law has been the subject of frequent amendment. First, the law has been amended to exempt over 30 specific classes of businesses, which appear in the second paragraph of Section 3204. Second, in 1963, the law was amended to include, as the last of this series of exempted establishments, a general category of exempted enterprises consisting of "stores which have no more than 5,000 square feet of interior customer selling space, excluding back room towards storage, office and processing space." P.L. 1963, ch. 370. Finally, in 1983, the law was also amended to exempt from its operation any place of business which operated "between the hours of noon and 5:00 P.M. on those Sundays falling between Thanksgiving Day and Christmas Day." P.L. 1983, ch. 156.

II. The 1990 Amendment

The initiated legislation passed by the electorate on November 6, 1990 made two amendments to this statutory scheme. First, it added to the list of exemptions from the law (including the general exemption for stores which are no more than 5,000 square feet in size) a new exemption providing that: "stores with more than 5,000 square feet of interior customer selling space which engage in retail sales and which do not require, as a condition of employment, that their employees work on Sundays." Second, the initiated legislation added a new sentence to the paragraph containing the list of exemptions, providing that: "In no event, however, shall any store having more than 5,000 square feet of interior customer selling space be open on Easter Day, Thanksgiving Day and Christmas Day." P.L. 1989, I.B. 3. The results of the election enacting the initiated legislation were certified by the Secretary of State on November 26, 1990. Under the provisions of Me. Const., Art. IV, Pt. 3, § 19, it is now in order for the Governor to make a public proclamation of the results within 10 days of the Secretary of State's action, after which the amendments will take effect 30 days thereafter.

## III. Specific Questions

Before answering the specific questions which have arisen as a result of the new amendments to the Sunday Sales Law, it is important first to observe that since these amendments occurred as the result of initiated legislation, there is no legislative history in the traditional sense to which a person seeking to interpret the intention of the amendments may resort. Thus, one is left only with the text of the amendments, as well as the manner in which the initiators choose to integrate the amendments within the text of the entire law, as legally cognizable sources for their interpretation.

### A. Ability of Business Establishments to Require Employees to Work on Sundays

Perhaps the most frequently asked question thus far concerning the interpretation of the 1990 amendments to the Sunday Sales Law is whether the provision of those amendments prohibiting stores from requiring employees to work on Sundays as a condition of employment applies to business establishments which were previously exempted from the operation of the law in its entirety. In the view of this Department, it was not the intention of the initiators that this provision apply to business establishments (including stores of less than 5,000 square feet in size) which were previously exempted. The reason for this view is that, instead of setting forth the prohibition against required Sunday work in a separate sentence, the initiators elected to contain it within an additional exemption which they added to the long list of exemptions already in the law. Thus, it appears that their intention was that only those stores which avail themselves of the newly created exemption of "stores with more than 5,000 square feet of interior customer selling space which engage in retail sales" should be subjected to the requirement that they not be allowed to require their employees, as a condition of employment, to work on Sundays. Consequently, if a business establishment can show that it is exempt under one of the other exemptions (including the one exempting stores which have "no more than 5,000 square feet of interior customer selling space"), it may continue to require that its employees work on Sunday.

This Department has also been asked whether this restriction on requiring employees to work on Sunday applies to salaried employees, such as supervisors, as well as those who work on an hourly basis. On this question, the initiators have provided no assistance other than their use of the word "employees." Thus, it appears that they did not intend to discriminate between classes of employees. Consequently,

retail stores seeking to take advantage of the newly created exemption may not require any of their employees to work on Sundays.

A final question concerning employee relations is whether a company availing itself of the new exemption may tell an existing full-time or part-time employee that his or her hours of employment may be reduced or rearranged if he or she does not work on Sunday. In the view of this Department, such an action by an employer would constitute the imposition of a "condition of employment" on the employee not choosing to work on Sunday, and would destroy the employer's eligibility for the exemption.

B. Employee Remedies

This Department has also been asked what remedies would be available to an employee whose employer, while availing himself of the new exemption for retail stores of more than 5,000 square feet in size, requires that employee to work on Sunday. Such an employee would first have the ability to report the violation to the appropriate District Attorney so as to cause the employer to be prosecuted for maintaining a business illegally on Sunday. In addition, if the employee is a resident of a municipality in which the violation occurred, he or she may file a complaint in Superior Court seeking an injunction. 17 M.R.S.A. § 3204. Finally, such an employee would also have the ability to report the employer to the Maine Human Rights Commission for a violation of the Maine Whistleblowers' Protection Act, 26 M.R.S.A. § 831 et seq. That Act provides that "no employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because . . . the employee, acting in good faith . . . reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, . . ." 26 M.R.S.A. § 833(1)(A). Protection under the Act is given to an employee only if the employee 1) brings the alleged violation of the Sunday Sales Law to the attention of a supervisor and 2) allows the employer a reasonable opportunity to correct the alleged violation. If, having met these preconditions, the employee has the conditions of his employment in any way altered by the employer because of his or her refusal to work on Sunday, that employee may then bring the matter to the attention of the Human Rights Commission which, after investigation, is authorized, at no cost to the employee, to seek a court order to make the employee whole (by restoring lost employment, hours, pay, and benefits) and assessing civil penalties.

C. Easter, Thanksgiving and Christmas

This Department has also been asked whether the new provision of the law requiring that "stores" with more than 5,000 square feet of interior customer selling space be closed on Easter, Thanksgiving and Christmas applies to stores which were previously exempted from the law. On this point, the text of the initiators' amendments can be read in two inconsistent ways. On the one hand, the fact that the initiators chose to include the prohibition against opening on the three holidays in a separate sentence, preceded by the words "In no event, however . . . ," could be read to manifest an intention that all stores more than 5,000 square feet in size, regardless of whether they were previously exempted, would be covered. On the other, the fact that the initiators used the same word, "stores," in both of the two new provisions of the law might manifest an intention that they mean the same thing, namely, stores more than 5,000 square feet in size which were not previously exempt.

In view of this uncertainty, and mindful of the rule of statutory construction that penal statutes are to be strictly construed against the State, State v. S. S. Kresge, Inc., 364 A.2d 868, 870 (Me. 1976) (construing Sunday Sales Law), this Department is reluctant to conclude that the initiators intended that the prohibition on opening on Easter, Thanksgiving and Christmas apply to any of the 30 or so activities previously exempted. This conclusion is supported by the fact that few of these activities could properly be said to occur in "stores." Thus, in the view of this Department, if a business, even of more than 5,000 square feet in size, was previously exempted from the Sunday Sales Law, it may remain open on the three holidays in question.

D. Meaning of "Retail" Stores

As indicated above, the new exemption for business establishments of more than 5,000 square feet in size, applies only to "stores" which engage in "retail sales." Not surprisingly, some question has arisen as to the scope of these terms. On this issue, this Department is not able to be of great assistance except to refer to the dictionary definition of "retail," which suggests that the term applies to "the sale of goods or articles individually or in small quantities directly to the consumer." Webster's New World Dictionary, 2d ed. Thus, it would appear that the exemption applies only to businesses involved in the sale of goods, rather than services, and applies only if those sales are being made directly to the ultimate consumers. Beyond this, the Department (and the courts) would have to determine its view of the application of the exemption to individual business establishments on a case-by-case basis.

E. Continuing Vitality of Hour Limitations on the Sundays between Thanksgiving and Christmas

Beginning in 1991, the new amendments to the Sunday Sales Law will apply to the Sundays falling between Thanksgiving Day and Christmas Day. A question arises, therefore, as to whether the existing provision that the law does not apply at all between the hours of noon and 5:00 P.M. on those Sundays applies to the stores newly exempted from the law. In the view of this Department, those restrictions would not apply to these stores. As indicated above, the initiated legislation simply adds a new class of exempted business establishments to the list of already exempted business establishments, namely retail stores of more than 5,000 square feet in size. Since all of the other previously exempted business establishments were not bound by the noon to 5:00 P.M. restrictions on the Sundays between Thanksgiving and Christmas, the newly exempted stores would therefore also not be so bound. Consequently, only the business establishments which somehow remain subject to the general prohibition of the Sunday Sales Law would be allowed to open only on those Sundays between Thanksgiving and Christmas and only within the hours specified.

F. Certain Businesses

Finally, it is worth noting that there are other provisions of the Sunday Sales Law, outside of Section 3204, which deal with specific businesses or activities, and which are not affected by the amendments to Section 3204. Those businesses and activities include those involving in the sale of motor vehicles, 17 M.R.S.A. § 3203; the conduct of amateur sports, 17 M.R.S.A. § 3205; and the showing motion pictures, 17 M.R.S.A. § 3207. Therefore, questions concerning the application of the Sunday Sales Law to these activities should be answered by reference to the appropriate section dealing specifically with them and not by reference to Section 3204.

* * *

I hope the foregoing is of assistance to you in the enforcement of the Sunday Sales Law. Please feel free to inquire with this office if you have any further questions, directing those questions to Deputy Attorney General Cabanne Howard.

Sincerely,

JAMES E. TIERNEY
Attorney General

JET:sw
cc: Patricia Ryan, Executive Director
Maine Human Rights Commission
Charles A. Morrison, Commissioner of Labor

Historical and Statutory Notes

1987 Legislation

Laws 1987, c. 695, in the first paragraph, deleted ", whether or not acting under color of law," following "no person".

WESTLAW Electronic Research

See WESTLAW guide following the Preface of this supplement.

§ 2932. Penalty

A violation of this chapter is a Class D crime.

1987, c. 515, § 2.

## CHAPTER 101

## PUBLIC OFFICES AND OFFICERS

### § 3104. Conflicts of interest; purchases by the State

Cross References

Main educational loan authority representatives, applicability of this section, see title 20-A, § 11419.

preclude him, on conflict of interest grounds, from either running for or holding a seat in the Maine Legislature. Op.Atty.Gen. No. 86-12, May 5, 1986.

Notes of Decisions

1. State legislator

Mere fact that a person provides contractual services to an agency of the State does not

## CHAPTER 105

## RELIGIOUS ASSEMBLIES, HOLY DAYS AND HOLIDAYS

### SUBCHAPTER I

### HOLY DAYS

### § 3204. Business, traveling or recreation on Sunday

No person, firm or corporation may, on the Lord's Day except between the hours of noon and 5:00 p.m. on those Sundays falling between Thanksgiving Day and Christmas Day; Memorial Day, the last Monday in May, but if the Federal Government designates May 30th as the date for observance of Memorial Day, the 30th of May; July 4th; Labor Day, the first Monday of September; Veterans' Day, November 11th; Christmas Day and Thanksgiving Day as proclaimed by the Governor, keep open a place of business to the public, except for works of necessity, emergency or charity.

*Text of second paragraph pending approval of 1989 H.B. 43*

This section shall not apply to: The operation or maintenance of common, contract and private carriers; taxicabs; airplanes; newspapers; radio and television stations; hotels, motels, rooming houses, tourist and trailer camps; restaurants; garages and motor vehicle service stations; retail monument dealers; automatic laundries; machines that vend anything of value, including, but not limited to, a product, money or service; a satellite facility approved by the Superintendent of Banking under Title 9-B, or comparable facility approved by the appropriate federal authority; pharmacies; greenhouses; seasonal stands engaged in sale of farm produce, dairy products, sea food or Christmas trees; public utilities; industries normally kept in continuous operations, including, but not limited to, pulp and paper plants and textile plants; processing plants handling agricultural produce or products of the sea; ship chandleries; marinas; establishments primarily selling boats, boating equipment, sporting equipment, souvenirs and novelties; motion picture theatres; public dancing; sports and athletic events; bowling alleys;

corporation engages in or employs others to engage in the sale, trade or exchange of property in violation of the law constitutes a separate offense.

In addition to any criminal penalties provided in this section, the Attorney General, district attorney or any resident of a municipality in which a violation is claimed to have occurred may file a complaint with the Superior Court to enjoin any violation of this section. The Superior Court shall have original jurisdiction of such complaints and authority to enjoin such violations.

This section shall not apply to isolated or occasional sales by persons not engaged in the sale, transfer or exchange of property as a business.

1983, c. 156; 1983, c. 480, § A, 13, eff. June 24, 1983; 1985, c. 114, § 3, eff. April 19, 1985; 1985, c. 509, eff. Nov. 15, 1985; 1989, I.B. 3.

1 Section 211 et seq. of title 8.

Historical and Statutory Notes

1983 Amendments. Chapter 156 in first paragraph substituted "may" for "shall", and inserted "except between the hours of noon and 5:00 p.m. on those Sundays falling between Thanksgiving Day and Christmas Day".

Chapter 480 deleted "of the Bureau" preceding "of Banking" in 2nd paragraph.

1985 Legislation

Chapter 114 repealed and replaced first paragraph, which prior thereto read:

"No person, firm or corporation may, on the Lord's Day, except between the hours of noon and 5:00 p.m. on those Sundays falling between Thanksgiving Day and Christmas Day, Memorial Day, the last Monday in May, but if the United States Government designates May 30th as the date for observance of Memorial Day or in 1985, whichever occurs first in time, the 30th of May, July 4th, Labor Day, the First Monday of September, Veterans Day, November 11th, Christmas Day and Thanksgiving Day as proclaimed by the Governor, keep open a place of business to the public except for works of necessity, emergency or charity."

Chapter 509 in the first paragraph, inserted "except between the hours of noon and 5:00 p.m. on those Sundays falling between Thanksgiving Day and Christmas Day".

1989 Amendment. 1989, I.B. 3, in the second par., included stores with more than 5,000 square feet of interior customer selling space which engage in retail sales and which do not require, as a condition of employment, that their employees work on Sundays among those entities that this section shall not apply to, and also provided that in no event, however, shall any store having more than 5,000 square feet of interior customer selling space be open on Easter, Thanksgiving and Christmas.

Effective Dates

1989 Initiated Bill. 1989, I.B. 3, is contingent upon approval by the voters of the state of Maine at the election on Nov. 6, 1990.

## CHAPTER 114

## DETENTION OF SHOPLIFTERS

### § 3521. Detention of shoplifters

A store owner, manager or supervisor, or that person's designee, may detain on the premises in a reasonable manner and for a period of time not to exceed ½ hour any person as to whom there is probable cause to believe is unlawfully concealing merchandise. The purposes of detention shall be: To require the person being detained to provide identification; to verify the identification; to inform a law enforcement officer of the detention and to surrender that person to the officer; and when the detained person is a minor, to inform a law enforcement officer or the parents or guardian of the minor of the detention and to surrender the minor to the person so informed.

1989, c. 122, § 1.

Historical and Statutory Notes

Amendments

1989 Amendment. Laws 1989, c. 122, § 1, authorized designees of store owners, managers or supervisors to detain suspected shoplifters, and omitted provisions authorizing warrantless arrest of such persons upon probable cause.

displaying or exploding fireworks, under Title 8, chapter 9; [1] musical concerts; religious, educational, scientific or philosophical lectures; scenic, historic, recreational and amusement facilities; real estate brokers and real estate salesmen; mobile home brokers and mobile home salesmen; provided that this section shall not exempt the businesses or facilities specified in sections 3205 and 3207 from closing in any municipality until the requirements of those sections have been met; stores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular conduct of business; stores which have no more than 5,000 square feet of interior customer selling space, excluding back room storage, office and processing space.

*Text of second paragraph as proposed to be amended by 1989, I.B. 3*

This section shall not apply to: The operation or maintenance of common, contract and private carriers; taxicabs; airplanes; newspapers; radio and television stations; hotels, motels, rooming houses, tourist and trailer camps; restaurants; garages and motor vehicle service stations; retail monument dealers; automatic laundries; machines that vend anything of value, including, but not limited to, a product, money or service; a satellite facility approved by the Superintendent of Banking under Title 9–B; or comparable facility approved by the appropriate federal authority; pharmacies; greenhouses; seasonal stands engaged in sale of farm produce, dairy products, sea food or Christmas trees; public utilities; industries normally kept in continuous operations, including, but not limited to, pulp and paper plants and textile plants; processing plants handling agricultural produce or products of the sea; ship chandleries; marinas; establishments primarily selling boats, boating equipment, sporting equipment, souvenirs and novelties; motion picture theatres; public dancing; sports and athletic events; bowling alleys; displaying or exploding fireworks, under Title 8, chapter 9; [1] musical concerts; religious, educational, scientific or philosophical lectures; scenic, historic, recreational and amusement facilities; real estate brokers and real estate salesmen; mobile home brokers and mobile home salesmen; provided that this section shall not exempt the businesses or facilities specified in sections 3205 and 3207 from closing in any municipality until the requirements of those sections have been met; stores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular conduct of business; stores which have no more than 5,000 square feet of interior customer selling space, excluding back room storage, office and processing space; and stores with more than 5,000 square feet of interior customer selling space which engage in retail sales and which do not require, as a condition of employment, that their employees work on Sundays. In no event, however, shall any store having more than 5,000 square feet of interior customer selling space be open on Easter Day, Thanksgiving Day and Christmas Day.

For the purpose of determining qualification, a "store" shall be deemed to be any operation conducted within one building advertising as, and representing itself to the public to be, one business enterprise regardless of internal departmentalization. All subleased departments of any store shall for the purpose of this section be deemed to be operated by the store in which they are located. Contiguous stores owned by the same proprietor or operated by the same management shall be deemed to be a single store for the purpose of this statute.

Any person, firm or corporation found guilty of violating any of the provisions of this section shall be punished by a fine of not more than $100 or by imprisonment for 30 days, or by both, for the first offense; and by a fine of $500 or by imprisonment for 60 days, or by both, for the 2nd offense occurring within one year following the first conviction. Any offense subsequent to the 2nd offense and occurring within 2 years following the 2nd conviction shall be punished by a fine of not more than $1,000 or by imprisonment for 90 days, or by both. No complaint charging violation of this section shall issue later than 5 days after its alleged commission.

Each separate sale, trade or exchange of property or offer thereof, in violation of this section, and each Lord's Day or one of the aforementioned holidays a person, firm or