

OPINION OF the JUSTICES of the Supreme Judicial Court Given Under the Provisions of Section 3 of Article VI of the Constitution

[NO NUMBER IN ORIGINAL]

Supreme Judicial Court of Maine

402 A.2d 601; 1979 Me. LEXIS 768

May 31, 1979

PRIOR HISTORY: [**1] Questions Propounded LexisNexis(R) Headnotes
by the House.

CASE SUMMARY:

PROCEDURAL POSTURE: In compliance with *Me. Const. art. VI, §3* the Supreme Court Justices submitted answers to the questions propounded by the Maine House of Representatives.

OVERVIEW: The House propounded questions to the Supreme Court justices concerning whether amendments to House Paper 1172, Legislative Document 1432 (LD 1432) and Senate Paper 547, Legislative Document 1614 (LD 1614) violate *Me. Const. art. I, § 6-A* or art. IV, part 3, § 13. The court determined that the amendments would violate the state constitution. LD 1432 proposed to authorize the town to abate certain property taxes for certain years. If the resolve became law, it would authorize the town to grant an abatement to the owners of the property which would not be authorized for other taxpayers similarly situated. LD 1614 would authorize the issuance of a special restaurant malt liquor license in the town to a certain corporation and such a license would not be available to any other applicant under the applicable general laws, *Me. Rev. Stat. Ann. tit. 28, § 101* (Supp. 1978-1979). The legislature could not enact a special law or pass a resolve dispensing with the general law that granted a privilege to one person leaving all other persons under its operation. The justices found no factors that distinguished the beneficiaries of the special resolves from other similarly situated.

OUTCOME: The justices determined that the legislative documents under review would violate the state constitution if enacted into law.

CORE TERMS: malt, general law, special legislation, liquor license, authorize, House Amendment A, restaurant, issuance, license, property taxes, similarly situated, abate

Constitutional Law > Equal Protection > Scope of Protection

Governments > Legislation > Enactment

[HN1] On principle then it can never be within the bounds of legitimate legislation, to enact a special law, or pass a resolve dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just or reasonable in its consequences. It is our boast that we live under a government of laws and not of men. But this can hardly be deemed a blessing unless those laws have for their immoveable basis the great principle of constitutional equality.

Constitutional Law > Equal Protection > Level of Review

Constitutional Law > Equal Protection > Scope of Protection

[HN2] Special legislation does not constitute a per se violation of the special legislation clause (*Me. Const. article IV, part 3, § 13*). Where the objects of a law cannot readily be attained by general legislation, special legislation may be enacted. Nor can an alleged denial of the equal protection clause of the Maine Constitution (*Me. Const. art. I, § 6-A*) rest solely on the fact that the legislation affects a limited number of people. Where there has been a reasonable classification of the objects of the law, generally there are no equal protection problems, even if the law does not operate equally on all individuals and places alike. Universality is immaterial as long as those affected are reasonably different from those excluded and there is a rational basis for treating them in a different manner.

JUDGES: Vincent L. McKusick Chief Justice. Charles A. Pomeroy. Sidney W. Wernick, James P. Archibald,

Thomas E. Delahanty, Edward S. Godfrey, David A. Nichols, Associate Justices.

OPINION BY: PER CURIAM

OPINION

[*601] HOUSE ORDER PROPOUNDING QUESTIONS

ANSWERS OF THE JUSTICES

To the Honorable House of Representatives of the State of Maine:

In compliance with the provisions of *section 3 of Article VI of the Constitution of Maine*, we, the undersigned Justices of the Supreme Judicial Court have the honor to submit the following answers to the questions propounded on May 31, 1979.

Question #1: Would House Paper 1172, Legislative Document 1432, as amended by House Amendment "A", under filing number H-579, attached as Exhibit A, if enacted into law, violate Article I, section 6-A or Article IV, part 3, section 13 of the Maine Constitution?

Question #2: Would Senate Paper 547, Legislative Document 1614, as amended by House Amendment "A", under filing number H-580, attached as Exhibit B, if enacted into law, violate Article I, section 6-A or Article IV, part 3, section 13 of the Maine Constitution?

ANSWER: We answer both questions in [*2] the affirmative.

L.D. 1432, "Resolve Authorizing the Town of Kennebunk to Abate Certain Property Taxes," by its terms would authorize the Town on Kennebunk to abate certain property taxes for the years 1973 to 1977 assessed and collected by the town on the [*602] property of Lawrence B. Folsom and Mary C. Folsom. This resolve, if it became law, would authorize the Town of Kennebunk to grant an abatement to the Folsoms which would not be authorized for any other taxpayers similarly situated.

L.D. 1614, "Resolve Providing a Special Restaurant Malt Liquor License in the Town of Georgetown," by its terms would authorize the issuance of a special restaurant malt liquor license in the Town of Georgetown to Robinhood Marina, Inc. for October 2-9, 1979. Such license would not be available to any other applicant under the general law relating to the issuances of the malt liquor licenses, 28 M.R.S.A. § 101 (Supp.1978-79).

The underlying issue raised by the questions may be set in proper perspective by quoting the words of Mr. Chief Justice Mellen, who said in *Lewis v. Webb*, 3 Me. 326, 336 (1825):

[HN1] "On principle then *it can never be within the bounds of legitimate legislation, [*3] to enact a special law, or pass a resolve dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation.* Such a law is neither just or reasonable in its consequences. It is our boast that we live under a government of laws and not of men. But this can hardly be deemed a blessing unless those laws have for their immoveable basis the great principle of constitutional equality." (Emphasis added)

This decision has been consistently followed by this court in *Durham v. Lewiston*, 4 Me. 140 (1826); *Milton v. Bangor Railway & Electric Co.*, 103 Me. 218, 68 A. 826 (1907); *Maine Pharmaceutical Ass'n v. Board of Comm'rs, Me.*, 245 A.2d 271 (1968); *Look v. State, Me.*, 267 A.2d 907 (1970).

Of course, as the Law Court noted in *Nadeau v. State, Me.*, 395 A.2d 107 (1978), [HN2] special legislation does not constitute a *per se* violation of the special legislation clause (Article IV, part 3, section 13). "Where the objects of a law cannot readily be attained by general legislation, special legislation may be enacted." [*4] *Id. at 113.* Nor can an alleged denial of the equal protection clause of the Maine Constitution (Article I, section 6-A) rest solely on the fact that the legislation affects a limited number of people. "Where there has been a reasonable classification of the objects of the law, generally there are no equal protection problems, even if the law does not operate equally on all individuals and places alike. Universality is immaterial as long as those affected are reasonably different from those excluded and there is a rational basis for treating them in a different manner." *Id. at 113.*

In reviewing L.D. 1432 and L.D. 1614, we find no factors distinguishing the beneficiaries of the special resolves from others similarly situated. There is nothing in the findings of fact submitted to us to suggest that the Folsoms are the only victims of an assessor's error or that the owners of Robinhood Marina, Inc., are the only entrepreneurs in a town which has voted to bar the granting of licenses for the sale of malt liquor to be consumed on the premises who desire temporary waiver of the prohibition.

For these reasons, we must conclude that L.D. 1432 and L.D. 1614 would violate Article [*5] I, section

6-A, and Article IV, part 3, section 13, of the Maine
Constitution if enacted into law.

VINCENT L. McKUSICK

Chief Justice

CHARLES A. POMEROY

SIDNEY W. WERNICK

JAMES P. ARCHIBALD

THOMAS E. DELAHANTY

EDWARD S. GODFREY

DAVID A. NICHOLS

Associate Justices