

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Civil Action
Docket No. CV 94-1128

FOREST CITY CHEVROLET/SAAB,)
CLAIR CAR CONNECTION, INC.)
and MAINE AUTOMOBILE DEALERS)
ASSOCIATION, INC.,)

Plaintiffs)

v.)

ORDER

MAINE MALL MOTORS and)
GREEN MILL CORPORATION)
d/b/a JOLLY JOHN AUTO CITY,)

Defendants)

IT IS HEREBY ORDERED as follows:

(A) The State of Maine, through the Office of the Attorney General, is hereby permitted to intervene in this matter, pursuant to Maine Rule of Civil Procedure 24.

(B) Until further notice of this Court, the State of Maine, through the Office of the Attorney General, shall be treated as a party to this action and shall receive Court notices and copies of filings of the parties.

(C) Plaintiffs' brief and affidavits, if any, as well as the brief and affidavits of the State of Maine, through the Office of the Attorney General, should there be any, shall be filed with this Court on or before January 27, 1995.

(D) The reply brief of Defendant Maine Mall Motors shall be filed on or before February 3, 1995.

(E) A conference of counsel with the Court shall be held on February 3, 1995, at a time and place to be announced.

(F) A plenary hearing on the merits of this action shall be scheduled between February 15 and February 28, 1995.

SO ORDERED.

Dated:

Arthur Brennan, Justice
Maine Superior Court

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-94-_____

FOREST CITY CHEVROLET/SAAB)
a Maine Corporation with its)
principal place of business in)
Portland, County of Cumberland,)
State of Maine,)

and)

CLAIR CAR CONNECTION, INC.,)
a Maine Corporation with its)
principal place of business in)
Saco, County of York,)
State of Maine,)

and)

MAINE AUTOMOBILE DEALERS)
ASSOCIATION, INC. a Maine)
Corporation with its)
principal place of business)
in Augusta, County of Kennebec,)
State of Maine,)

Plaintiffs,)

v.)

MAINE MALL MOTORS,)
a Maine Corporation with its)
principal place of business in)
South Portland, County of)
Cumberland, State of Maine,)

and)

GREEN MILL CORPORATION d/b/a)
JOLLY JOHN AUTO CITY, a Maine)
Corporation with its principal)
place of business in Saco,)
County of York, State of Maine,)

Defendants.)

VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT

NOW COME the Plaintiffs, Forest City Chevrolet/Saab, Clair Car Connection, Inc. and Maine Automobile Dealers Association, Inc. by and through counsel, Preti, Flaherty, Beliveau & Pachios, request declaratory relief pursuant to 14 M.R.S.A. § 5951, et seq., and otherwise also complain as follows:

1. Plaintiff Forest City Chevrolet/Saab ("Forest City") is a corporation organized and existing under the laws of the State of Maine, with a principal place of business in Portland, Maine.

2. Plaintiff Clair Car Connection, Inc. ("CCC") is a corporation organized and existing under the laws of the State of Maine, with a principal place of business in Saco, Maine.

3. Plaintiff Maine Automobile Dealers Association, Inc. ("MADA") is a corporation organized and existing under the laws of the State of Maine, with a principal place of business in Augusta, Maine.

4. Plaintiff Forest City owns, operates and does business as Forest City Chevrolet/Saab, an automobile dealership carrying on or engaged in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles.

5. Plaintiff CCC owns, operates and does business as Clair Car Connection, Inc., an automobile dealership carrying on or engaged in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles.

6. Plaintiff MADA is an association of franchised new car and truck dealers. MADA has 185 members located throughout the State of Maine. MADA represents the interests of its members as they may arise from time to time.

7. Defendant Maine Mall Motors, Inc. ("MMM") is a corporation organized and existing under the laws of the State of Maine, with a principal place of business in South Portland, Maine.

8. Defendant Maine Mall Motors owns, operates and does business as an automobile dealership carrying on or engaged in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles.

9. Defendant Green Mill Corporation d/b/a Jolly John Auto City ("Jolly John") is a corporation organized and existing under the laws of the State of Maine, with a principal place of business in Saco, Maine.

10. Defendant Green Mill Corporation owns, operates and does business as Jolly John Auto City ("Jolly John"), an automobile dealership carrying on or engaged in the business of buying, selling, exchanging, dealing or trading in new and used motor vehicles.

11. By Public Law, Chapter 105, the Legislature enacted 17 M.R.S.A. §§ 3201 through 3209, which designate and define the various holidays, holy days, and days of religious assembly upon which one is or is not permitted to keep open a place of business to the public.

12. 17 M.R.S.A. § 3203 specifically outlines prohibitions on the sales of motor vehicles on Sundays. See Exhibit A, attached hereto and incorporated herein by reference.

13. 17 M.R.S.A. § 3203 specifically prohibits anyone from carrying on or engaging in the business of "buying, selling, exchanging, dealing or trading in new or used motor vehicles" or opening any place of business or lot wherein that person "attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles" or "who does buy, sell, exchange, deal or trade in new or used motor vehicles as a business on the first day of the week, commonly known and designated as Sunday...." 17 M.R.S.A. § 3203, as amended.

14. Pursuant to § 3203 of Title 17, any and all such persons engaged in the aforescribed behavior described in paragraphs 10 and 11 of this complaint are designated "disorderly persons."

15. During or about November 13, 1994, Defendant Maine Mall Motors carried on or engaged in the business of buying, selling, exchanging, dealing or trading in new or used vehicles, or otherwise attempted to or did in fact buy, sell, exchange, deal or trade in new or used motor vehicles as a business on the first day of the week, commonly known and designated as Sunday.

16. On November 11, 1994, Veterans' Day, a holiday which is designated as a date on which all dealerships must be closed, Maine Mall Motors was open for business in violation of Maine law. Specifically, dealerships are prohibited from being open on four holidays: Veterans' Day, Memorial Day, July 4th and Labor Day.

17. During or about November 13, 1994, Defendant Jolly John carried on or engaged in the business of buying, selling, exchanging, dealing or trading in new or used vehicles, or otherwise attempted to or did in fact buy, sell, exchange, deal or trade in new or used motor vehicles as a business on the first day of the week, commonly known and designated as Sunday.

18. The aforescribed operation of the dealerships is prohibited by § 3203 of Title 17.

19. Plaintiffs Forest City and CCC, which do business as automobile dealerships engaged in the buying and selling of motor vehicles hereby seek to enjoin the violations of Maine law generally and specifically § 3203 of Title 17.

20. Plaintiffs Forest City and CCC have been, are being, and will be irreparably injured by the operation of Defendants' respective businesses on Sundays and Defendant MMM's operation on designated holidays in violation of the prohibitions contained under Maine law.

21. The continuing operation of Defendants' businesses will continue to adversely and unlawfully affect the Plaintiffs.

22. The public interest will be served by enjoining the unlawful operation of Defendants' business.

WHEREFORE, pursuant to 14 M.R.S.A. § 5954 and Rule 65 of the Maine Rules of Civil Procedure, Plaintiffs seek injunctive and declaratory relief as follows:

(a) Temporarily, preliminarily, and permanently restraining and enjoining Defendants Maine Mall Motors, Inc. and Green Mill Corporation d/b/a Jolly John Auto City from carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles at any and all times and manner as prohibited under § 3203 of Title 17;

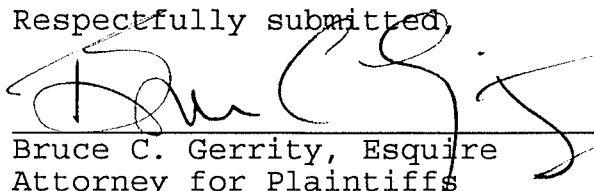
(b) A declaration of the Court that Defendants are in violation of the provisions of § 3203 of Title 17 prohibiting the operation of motor vehicle dealerships on Sundays;

(c) A declaration of the Court that Defendants are in violation of § 3203 which prohibits the operation of motor vehicle dealerships on certain holidays; and

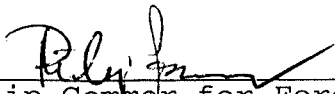
(d) Any and all further relief to which the Plaintiffs may be entitled.


Dated at Augusta, Maine this 16th day of November, 1994.

Respectfully submitted,



Bruce C. Gerrity, Esquire
Attorney for Plaintiffs
Forest City Chevrolet/Saab and
Maine Automobile Dealers
Association


Philip Gemmer for Forest City
Chevrolet/Saab

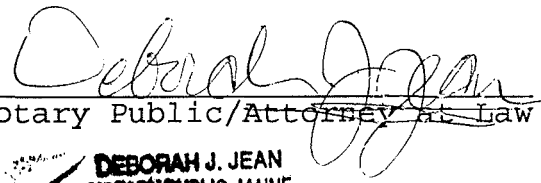

Michael S. Clair for Clair Car
Connection, Inc.

State of Maine
Cumberland, ss.

November 16, 1994

Philip Gemmer being duly sworn, deposes and says that he resides in Portland, County of Cumberland and State of Maine; that he is a principal and authorized agent of the Plaintiff herein and that he has read the foregoing Verified Complaint and knows the content thereof and the same are true of his own knowledge except as to matters therein stated to be believed on information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this 16 day of November, 1994.

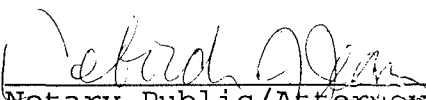

Notary Public/Attorney at Law
DEBORAH J. JEAN
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES APRIL 6, 1997

State of Maine
Cumberland, ss.

November 16, 1994

Michael S. Clair being duly sworn, deposes and says that he resides in Biddeford, County of York and State of Maine; that he is a principal and authorized agent of the Plaintiff herein and that he has read the foregoing Verified Complaint and knows the content thereof and the same are true of his own knowledge except as to matters therein stated to be believed on information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this 16 day of November, 1994.


Notary Public/Attorney at Law
DEBORAH J. JEAN
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES APRIL 6, 1997

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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-94-_____

FOREST CITY CHEVROLET/SAAB)
et al.)
 Plaintiffs,)
)
 v.)
)
)
MAINE MALL MOTORS, INC., et al.)
 Defendants.)

AFFIDAVIT OF
PHILIP GEMMER

I, Philip Gemmer, being duly sworn, state under oath as follows:

1. My name is Philip Gemmer. I reside in Portland, Maine. I make this Affidavit upon my own knowledge, information or belief; and, so far as upon information and belief, hereby state that I believe the information to be true.

2. I am presently employed as President of Forest City Chevrolet/Saab ("Forest City") and serve as dealer/operator of the franchises. Forest City is located at 1000 Brighton Avenue in Portland, Maine.

3. Forest City has been in business since 1922. This is our 74th year in business. I have been employed at Forest City since August, 1955.

4. Forest City is a corporation organized and existing under the laws of the State of Maine and is otherwise engaged in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles, leasing of such vehicles, and providing parts and services for motor vehicles.

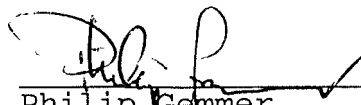
5. Forest City has approximately 100 employees and is open six days a week from 7:30 a.m. to approximately 8:00 p.m.

6. I include among my competitors, Maine Mall Motors, Inc. and the Jolly John Auto City, both of which are located in relatively close geographical proximity to my dealership. Both Maine Mall Motors and Jolly John Auto City operated on Sunday, November 13, 1994 and on Veterans' Day, 1994, Maine Mall Motors was open.

7. In order to compete with Maine Mall Motors and Jolly John, I would have to open my doors on Sunday, which is an act that I believe would be in violation of Maine law. The ability of Forest City to compete in the marketplace has been and will continue to be significantly damaged by other dealerships being open on Sundays and holiday, both in terms of direct sales negotiated and/or completed by competitors and the indirect benefit of exposure that comes with being open on Sundays or holidays. In addition, if I do open it will cost me money in obtaining additional employees and present other challenges associated with operating a dealership full time, seven days a week. I anticipate that it will start a chain reaction of dealerships opening on Sunday which will adversely affect other dealerships.

Dated:

11/16/94


Philip Gemmer ✓

STATE OF MAINE
CUMBERLAND, ss

November 16, 1994

Personally appeared the above named Philip Gemmer, and made oath that the foregoing statements by him subscribed are true to the best of his personal knowledge, information and belief and to the extent that information is based upon belief, he believes it to be true.

Before Me,

Deborah Jean
Notary Public

DEBORAH J. JEAN
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES APRIL 6, 1997

Print name: _____
My Commission Expires: _____

JPR/57075.AC8

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-94-

AFFIDAVIT OF
MICHAEL S. CLAIR

3. Clair Car Connection is a corporation organized and existing under the laws of the State of Maine and is engaged in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles, leasing of such vehicles, and providing parts and service for motor vehicles.

4. The dealership has approximately 125 employees at its Saco location and is open from 7:30 a.m. to 8:00 p.m. on the weekdays and from 8:00 a.m. to 5:00 p.m. on Saturdays.

5. Clair Car Connection includes amongst its geographical competitors dealerships operated by Maine Mall Motors, Inc. and Jolly John Auto City. Maine Mall Motors and Jolly John Auto City have opened their dealerships for business on Sundays in the recent past. Maine Mall Motors was open on Veteran's Day, 11/11/94.

6. I am familiar with the Maine law prohibiting the operation of an automobile dealership on Sundays.

7. Those of us who obey the law and do not open for business on Sunday are placed at a disadvantage because customers are lost to the other dealerships that are violating the law. Based on my experience in the industry, having a dealership open on Sunday will lead to an increase in personnel costs and general operating costs. Moreover, being open on Sunday also presents financial hardships inasmuch as most of the banks are closed and the franchisor's corporate finance department is also closed. The ability of CCC to compete in the marketplace has been and will continue to be significantly damaged by other dealerships being open on Sundays or holidays, both in terms of direct sales negotiated and/or completed by competitors and the indirect benefit of exposure that comes with being open on Sundays or holidays.

Dated:

11/16/94



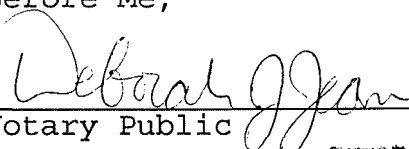
Michael S. Clair
Vice President of Clair
Car Connection, Inc.

STATE OF MAINE
CUMBERLAND, ss

November 16, 1994

Personally appeared the above named Michael S. Clair, and made oath that the foregoing statements by him subscribed are true to the best of his personal knowledge, information and belief and to the extent that information is based upon belief, he believes it to be true.

Before Me,



Notary Public

DEBORAH J. JEAN

NOTARY PUBLIC, MAINE

Print name:

My Commission Expires: APRIL 6, 1997

JPR/57075.AC9

17 § 3201**CRIMES****Title 17****Ch. 105****§ 3201. Definition of Lord's Day**

The Lord's Day includes the time between 12 o'clock on Saturday night and 12 o'clock on Sunday night.

R.S.1954, c. 134, § 35.

Library References

Sunday ☞1.

C.J.S. Sunday § 1.

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§ 3202. Computation by standard time

To determine when the Lord's Day begins and ends under section 3204 as it applies to diversion, show or entertainment, the hours shall be United States Eastern Standard time.

1963, c. 250; 1971, c. 334, § 1.

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Historical Note

The 1971 amendment deleted "public dancing" following "as it applies to".

Derivation: R.S.1954, c. 134, § 37-A, as enacted by Laws 1963, c. 250.

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Cross References

Standard time and Eastern daylight time, see title 1, § 151.

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C.J.S. Time § 7.

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§ 3203. Sales of motor vehicles and mobile homes prohibited

Any person who shall carry on or engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles; or who shall open any place of business or lot wherein he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles; or who does buy, sell, exchange, deal or trade in new or used motor vehicles as a business on the first day of the week, commonly known and designated as Sunday, is a disorderly person. Such a disorderly person upon conviction for the first offense shall be punished by a fine of not more than \$100 or by imprisonment for not more than 10 days, or by both; and for the 2nd offense shall be punished by a fine of not more than \$500 or by imprisonment for not more than 30 days, or by both; and for the 3rd or each subsequent offense shall be punished by a fine of not more than \$750 or by imprisonment for not more than 6 months, or by both. If the person is the holder of dealer or transporter registration plates under Title 29, chapter 5, subchapter III-A,¹ such person shall be subject to the suspension or

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Ch. 105

HOLY DAYS, ETC.

17 § 3204

revocation of said plates, as provided for in Title 29, section 350-A, for the violation of this section.

1959, c. 302, § 2; 1961, c. 362, § 3; 1963, c. 296; 1973, c. 27, § 1; 1973, c. 788, § 70, eff. April 1, 1974; 1979, c. 127, § 124, eff. April 23, 1979.

¹ Section 341 et seq. of title 29.

Historical Note

Laws 1973, c. 27, in the first sentence, deleted "or mobile homes" following "motor vehicles" in three places.

Laws 1973, c. 788, in the third sentence, substituted "chapter 5, subchapter III-A" for "sections 331 or 332" and section "349" for "334".

The 1979 amendment, in the third sentence, substituted "section 350-A" for "section 349".

Derivation: R.S.1954, c. 134, § 38-A, as enacted by Laws 1959, c. 302, § 2. Laws 1961, c. 362 § 3; Laws 1963, c. 296.

Cross References

Motor vehicle dealers, license denial, suspension or revocation for violation of this section, see title 29, § 350-A.

Library References

Sunday ☞5.

C.J.S. Sunday §§ 6, 13, 15.

Notes of Decisions

In general 1

Local option 2

1. In general

Terms "exchange, deal or trade," within this section defining a disorderly person as anyone who shall buy, sell, exchange, deal or trade in new or used motor vehicles or mobile homes in a business on Sunday, are methods by which an individual can buy or sell a motor vehicle and, as such, evidence intent of legislature to prevent persons from engaging in business of purchasing or selling motor vehicles or mobile homes on Sunday. *Chenard v. Marcel Motors* (1978) Me., 387 A.2d 596.

Unilateral contract by which defendant obligated itself to make good on its performance to give a new automobile to any golfer who shot a hole in one in golf tournament being played on Sunday did not constitute an "exchange, deal or trade" of an automobile and, hence, was not proscribed by this section as constituting a Sunday contract. *Id.*

2. Local option

This section is a specific mandate of the Legislature and is not subject to the local option provision. *Atty. Gen. Report 1963-64, p. 50.*

§ 3204. Business, traveling or recreation on Sunday

No person, firm or corporation shall, on the Lord's 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

revocation of said plates, as provided for in Title 29, section 350-A, for the violation of this section.

1959, c. 302, § 2; 1961, c. 362, § 3; 1963, c. 296; 1973, c. 27, § 1; 1973, c. 788, § 70, eff. April 1, 1974; 1979, c. 127, § 124, eff. April 23, 1979.

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Cross References

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Library References

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C.J.S. Sunday §§ 6, 13, 15.

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§ 3204. Business, traveling or recreation on Sunday

No person, firm or corporation shall, on the Lord's 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.

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 the Bureau 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, 3206 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.

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

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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 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.

R.S.1954, c. 134, § 38; 1961, c. 362, § 1; 1963, c. 370, § 1; 1969, c. 236, § 3; 1969, c. 504, § 24-A; 1971, c. 334, § 2; 1973, c. 27, § 2; 1973, c. 114, § 4, eff. Jan. 1, 1974; 1973, c. 142; 1973, c. 350, eff. May 14, 1973; 1973, c. 567, § 20; 1973, c. 625, § 91; 1975, c. 418, § 3; 1975, c. 623, § 18-G; 1977, c. 284, § 3; 1981, c. 352, § 5, eff. May 29, 1981.

¹ Section 211 et seq. of title 8.

Historical Note

Laws 1969, c. 236, in the first paragraph, inserted "the 4th Monday of May," and "the first Monday of September," and substituted "Veterans Day, the 4th Monday of October" for "November 11th".

Laws 1969, c. 504, in the first paragraph, substituted "last Monday of May" for "4th Monday of May".

The 1971 amendment, in the second paragraph, inserted "public dancing".

17 § 3204

CRIMES

Title 17

Laws 1973, c. 27, in the second paragraph, inserted "mobile home brokers and mobile home salesmen;"

Laws 1973, c. 114, in the first paragraph, substituted "November 11th" for "the 4th Monday of October".

Laws 1973, c. 142, in the second paragraph, inserted "machines that vend anything of value, including, but not limited to, a product, money or service;"

Laws 1973, c. 350, in the second paragraph, inserted "displaying or exploding fireworks under Title 8, chapter 9;"

Laws 1973, c. 567, in the first sentence of the sixth paragraph, substituted "district attorney" for "county attorney".

Laws 1973, c. 625, in the second paragraph, substituted "pharmacies" for "drug stores", and consolidated the effects of Laws 1973, cc. 27, 142 and 350.

Laws 1975, c. 418, in the first paragraph, substituted "the 30th of May" for "the last Monday of May", and semicolons for commas in five places.

Laws 1975, c. 623, in the first paragraph, inserted "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 1977 amendment, in the second paragraph, inserted "bowling alleys;"

The 1981 amendment, in the second paragraph, inserted "a satellite facility approved by the Superintendent of the Bureau of Banking under Title 9-B; or comparable facility approved by the appropriate federal authority;"

Effective dates. Section 24-B of Laws 1969, c. 504, provided:

"Section 24-A of this Act shall become effective 91 days after the adjournment of the Legislature."

Section 7 of Laws 1973, c. 114, as added by Laws 1973, c. 625, § 286 provided:

"This Act shall become effective January 1, 1974."

Section 92 of Laws 1973, c. 625, provided: "Section 91 of this Act shall become effective 91 days after adjournment of the Legislature."

Section 5 of Laws 1975, c. 418, provided:

"This Act shall take effect whenever the United States Government designates May 30th as the date for observance of Memorial Day."

Section 18-H of Laws 1975, c. 623, provided:

"Section 18-G of this Act shall become effective 91 days after adjournment of the Legislature."

Cross References

Civil process, service on Lord's Day, see title 14, § 705.

Contracts and torts on Lord's Day, see title 16, § 353-A.

Library References

Holidays ☞ 4.
Sunday ☞ 3 et seq.

C.J.S. Holidays § 4.
C.J.S. Sunday § 4 et seq.

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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.

This section does 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-A;¹ musical concerts; religious, educational, scientific or philosophical lectures; scenic, historic, recreational and amusement facilities; real estate brokers and real estate sales representatives; mobile home brokers and mobile home sales representatives; provided that this section does 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. If an employer decreases the average weekly work hours of an employee who has declined to work on Sundays, it is prima facie evidence that the employer has required Sunday work as a condition of employment in violation of this section, unless the employer and employee agreed that the employee would work on Sundays when the employee was initially hired. In no event, however, may 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.

RELIGIOUS ASSEMBLIES, HOLY DAYS
Ch. 105

No complaint charging violation of this section.

Each separate sale, trade or exchange of property, and each Lord's Day of a corporation engages in or employs in violation of the law constitutes

In addition to any criminal penalty, any person or any resident of a municipality who files a complaint with the Superior Court shall have original jurisdiction over the violations.

This section shall not apply to the sale, transfer or exchange of property. 1983, c. 156; 1983, c. 480, § A, 13, eff. Nov. 15, 1985; 1989, I.B. 3; 1991

18 M.R.S.A. § 221 et seq.

His

1983 Amendments. Chapter 156 substituted "may" for "shall" "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 of Banking" in 2nd paragraph.

1985 Legislation

Chapter 114 repealed and replaced graph, which prior thereto read:

"No person, firm or corporation shall, 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, 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."

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

4. Exemptions—In general

Initiated legislation passed in the election to amend the Sunday Sales Act not prohibit previously exempted employers from requiring that their employees work on the Lord's Day although the newly exempted employers may condition employment; 2) leaves an aggrieved party numerous remedies for injunctive relief or assistance through

Y DAYS AND HOLIDAYS

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n Sunday

's Day except between the hours of noon and 5:00 p.m. on Thanksgiving Day and Christmas Day; Federal Government designates May 30th as the last Monday of May; July 4th; Labor Day, the first Monday after the first of September; Christmas Day and Thanksgiving Day, except for a place of business to the public, except for

for the maintenance of common, contract and commercial; radio and television stations; hotels, restaurants; garages and motor vehicle repair shops; laundries; machines that vend anything for money or service; a satellite facility under Title 9-B; or comparable facility approved by the Department of Agriculture; seasonal stands engaged in the sale of Christmas trees; public utilities; industries not limited to, pulp and paper plants, cultural produce or products of the sea; selling boats, boating equipment, sport-utility vehicles; public dancing; sports and shooting fireworks, under Title 8, chapter 10, scientific or philosophical lectures; scenic, real estate brokers and real estate sales company sales representatives; provided that the provisions specified in sections 3205 and 3207 of Title 17, chapters 10 and 11, have been met; he proprietor, are employed in the usual course of more than 5,000 square feet of interior space, office and processing space; and stores for interior selling space which engage in retail employment, that their employees work on the regular work hours of an employee who has no evidence that the employer has required the observance of this section, unless the employer works on Sundays when the employee was not having more than 5,000 square feet of interior space on Easter, Thanksgiving Day and Christmas

ore" shall be deemed to be any operation presenting itself to the public to be, one establishment. All subleased departments of a store shall be operated by the store in which the same proprietor or operated by the same person or the purpose of this statute.

violating any of the provisions of this section shall be punished by a fine of \$100 or by imprisonment for 30 days, or both, or by imprisonment for 60 days, or by both, following the first conviction. Any offense committed after the second conviction shall be punished by imprisonment for 90 days, or by both.

RELIGIOUS ASSEMBLIES, HOLIDAYS
Ch. 105

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 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; 1991, c. 315.

18 M.R.S.A. § 221 et seq.

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.

1991 Amendment. Laws 1991, c. 315, in the second par., changed title 8, chapter 9 reference to chapter 9-A, added provision that decreasing the weekly hours of an employee who has refused to work Sundays would be prima facie evidence that the employer has required Sunday work, and made gender-neutral language changes.

Effective Dates

1989 Initiated Bill. 1989, I.B. 3, was contingent upon approval by the voters of the state of Maine at the election on Nov. 6, 1990. 1989, I.B. 3, was approved by the voters of the state of Maine at the election held on Nov. 6, 1990, and took effect pursuant to M.R.S.A. Const. Art. 4, Pt. 3, § 19.

Notes of Decisions

4. Exemptions—In general

Initiated legislation passed in the 1990 general election to amend the Sunday Sales Law: 1) does not prohibit previously exempted employers from requiring that their employees work on Sundays, although the newly exempted employers may not so condition employment; 2) leaves available to an aggrieved party numerous remedies, including injunctive relief or assistance through the district

attorney or the Human Rights Commission; 3) does not require that previously exempted businesses close on Easter, Thanksgiving and Christmas, as the newly exempted businesses must do; 4) is probably applicable only to businesses that sell retail goods; 5) does not limit the newly exempted businesses to the noon-to-five restriction on Sundays between Thanksgiving and Christmas. Op.Atty.Gen. No. 90-8, Nov. 26, 1990.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-

FOREST CITY CHEVROLET/SAAB)
and)
CLAIR CAR CONNECTION, INC.)
and)
MAINE AUTOMOBILE DEALERS)
ASSOCIATION, INC.,)
)
Plaintiffs,)
v.)
MAINE MALL MOTORS,)
and)
GREEN MILL CORPORATION d/b/a)
JOLLY JOHN AUTO CITY,)
)
Defendants.)

ORDER ON MOTION FOR
TEMPORARY RESTRAINING
ORDER

This matter came before this Court for a hearing on Plaintiff's Motion for Temporary Restraining Order, accompanied by the supporting verified complaint dated November 16, 1994 and Affidavits of Philip Gemmer and Michael S. Clair dated November 16, 1994, as well as Plaintiff's supporting an incorporated memorandum of law. The Defendants were notified of the hearing. Based on the pleadings and supporting material filed therewith, and after hearing argument by counsel, this Court makes the following findings of fact and orders as follows:

1. Plaintiff Forest City Chevrolet/Saab owns, operates and does business as Forest City Chevrolet/Saab, an automobile dealership which is organized and existing under the laws of the State of Maine as a corporation with a principal place of business in Portland, Maine.

2. Plaintiff Clair Car Connection, Inc. owns, operates and does business as Clair Car Connection, Inc., an automobile dealership which is organized and existing under the laws of the State of Maine as a corporation with a principal place of business in Saco, Maine.

3. Defendant, Maine Mall Motors, Inc., is an automobile dealership that operates and does business, including, but not limited to, carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles.

4. Defendant, Green Mill Corporation d/b/a Jolly John Auto City, is an automobile dealership that operates and does business, including, but not limited to, carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles.

5. The Defendants carried on or engaged in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles in a manner expressly prohibited by § 3203 of 17 M.R.S.A., as amended.

6. Plaintiffs have demonstrated a likelihood of success on the merits and under the circumstances the Plaintiff, a competitor in the marketplace, will suffer irreparable injury if a temporary restraining order is not granted at this time.

7. The Court further finds that such injury outweighs any harm which the granting of the temporary restraining order would inflict on the Defendants, particularly given the clear public

policy expressed in 17 M.R.S.A. § 3202 and the fact that Defendants have been open one Sunday, and do not have an established pattern or practice of opening on Sundays.

8. The Court also finds that the public interest will not be adversely affected by the granting of this temporary restraining order.

On the basis of the foregoing findings and conclusions of law and for other reasons that may be stated on the record, this Court hereby **ORDERS, ADJUDGES AND DECREES:**

A. The Defendants are hereby temporarily restrained from carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles on Sundays.

B. This Order shall be the finding on the Defendants, their agents, servants, employees, attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

C. This Order shall remain in effect until a final hearing on Plaintiffs' request for a declaratory judgment and permanent injunctive relief in the matter is heard and decided or until otherwise modified by this Court.

D. The requirement of security is waived.

Dated: _____

Justice Mills
Maine Superior Court

JPR/57075.AC7

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-94-_____

FOREST CITY CHEVROLET/SAAB)	
et al.)	
)	
Plaintiffs,)	
)	
v.)	MOTION FOR TEMPORARY
)	RESTRAINING ORDER
)	WITH INCORPORATED
)	MEMORANDUM OF LAW
MAINE MALL MOTORS, et al.)	
)	
Defendants.)	

NOW COME the Plaintiffs, Forest City Chevrolet/Saab, Clair Car Connection, Inc. and Maine Automobile Dealers Association, Inc. by and through counsel, Preti, Flaherty, Beliveau & Pachios, and pursuant to Rule 65 of the Maine Rules of Civil Procedure respectfully request this Honorable Court for the issuance of a temporary restraining order:

(a) Restraining and enjoining the Defendants Maine Mall Motors and Green Mill Corporation d/b/a Jolly John Auto City from operating, carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles in derogation of the prohibition set forth in § 3203 of Title 17 as regards conducting business on Sundays.

The grounds for this Motion are that immediate and irreparable injury and harm, loss or damage will result to the Plaintiffs if said order is not granted immediately, as clearly appears from the specific facts set forth in the Verified Complaint and Affidavits of Philip Gemmer and Michael S. Clair

attached hereto. The undersigned certify that they have notified the Defendants in this matter, Maine Mall Motors, and Green Mill Corporation, of this Motion by delivering copies of same to them in person, and have made every reasonable effort to notify them in advance of the hearing set by the Court for Thursday, November 17, 1994 at 9:00 a.m. in Kennebec County Superior Court.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING ORDER**

I. BACKGROUND

Plaintiffs, Forest City Chevrolet/Saab and Clair Car Connection, Inc., own and operate automobile dealerships in the Cities of Portland and Saco, Maine, respectively. Pursuant to § 3203 of 17 M.R.S.A., Plaintiffs have restrained from operating their automobile dealership on Sundays. Defendants have commenced operation of dealerships on Sundays, as of November 17, 1994 in violation of the express prohibition on operation of such a dealership on a Sunday. Such operation of the automobile dealerships has resulted in the accompanying Complaint for Declaratory and Injunctive Relief.

II. DISCUSSION

**A. The Standards for Interim Injunctive Relief
are Well-Established under Maine Law.**

On a motion for preliminary injunction it is well-established in Maine that this Court must find that the following criteria have been met:

1. That the plaintiff will suffer irreparable injury if the injunction is not granted;
2. That such injury outweighs any harm which granting the injunctive relief would inflict on the defendant;
3. That plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and
4. That the public interest will not be adversely affected by granting the injunction.

Ingraham v. University of Maine at Orono, 441, A.2d 691, 693 (Me. 1982), citing Women's Community Health Center v. Cohen, 477 F. Supp. 542, 544 (D. Me. 1979); see also Crafts v. Quinn, 482 A.2d 825, 830 (Me. 1984).

Although it is not clear that a precise showing under all four criteria is required for the entry of a temporary restraining order, state and federal courts in Maine have referred to the four criteria listed above regarding whether or not to grant a temporary restraining order. See e.g., Bar Harbor Banking and Trust Co. v. Alexander, 411 A.2d 74, 79 (Me. 1980); New England Telephone and Telegraph Co. v. Public Utilities Commission of Maine, 565 F. Supp. 949, 953 (D. Me. 1983). Where, as here, Plaintiffs act to vindicate public interest and policy, they have a lighter burden of establishing entitlement to injunctive relief than would be the case if strictly private interests were involved. Bar Harbor Banking and Trust Co., infra., at 77-79; Maine Human Rights Commission v. City of Auburn, 425 A.2d 990, 995 (Me. 1991); U. V. Industries v. Posner, 466 F. Supp. 1251, 1255 (D.Me. 1979).

**B. Plaintiffs are Able to Demonstrate
a Likelihood of Success on the Merits.**

A brief review of the statute governing the operation of an automobile dealership on Sundays aptly demonstrates that the Defendants' conduct of business on Sundays is in violation of Maine law. Title 17 M.R.S.A. § 3203 expressly prohibits persons from carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles on a Sunday:

Any person who shall carry on or engage in the business of buying, selling, exchanging, dealing or trading new or used motor vehicles; or who shall open any place of business or lot wherein he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading new or used motor vehicles; or who does buy, sell, exchange, deal or trade a new or used motor vehicle as a business on the first day of the week, commonly known and designated as Sunday, is a disorderly person.

17 M.R.S.A. § 3203.

Defendants are clearly persons carrying on or engaging in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles. Defendants have been operating and continue to operate motor vehicle dealerships in such a manner as to be prohibited by § 3203's complete ban of sales on Sundays.

Section 3204 of Title 17 also governs Sunday Sales and delineates certain exceptions and exemptions. Section 3204, however, is separate and distinct from the express prohibitions

of § 3203 against carrying on or engaging in, or attempting to engage in, the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles on a Sunday.

Section 3203 was enacted in 1959 specifically to entirely prohibit the buying and selling of motor vehicles on any Sunday during the year. Section 3204, on the other hand, was enacted in 1954 as a successor statute to prior similar provisions governing the operation of businesses on Sundays dating back to the original enactment of the law in 1821. Section 3204, by its very terms, applies to all other categories of businesses and contains no language qualifying the sale of motor vehicles on Sundays.

Section 3204 was amended by the Maine Legislature in 1990 to permit businesses to open on certain Sundays subject to specific statutory restraints. 1989, I.B. 3. These amendments did not apply to § 3203, which was not amended. It is a well-established rule of statutory construction that standards are to be construed in such a manner as to be consistent and harmonious with one another. Bolduc v. Androscoggin County Comr's., 485 A.2d 655, 657-658 (Me. 1984); In re Belgrade Shores, Inc., 359 A.2d 59 (Me. 1976).

The enactment of § 3203 in 1959 clearly expresses the intention of the Legislature that the sale of motor vehicles be precluded in their entirety on any and all Sundays, notwithstanding any language in § 3204 that excepts or otherwise exempts certain other businesses from § 3204's general

prohibitions on Sunday sales. Section 3203 has long been characterized as a specific mandate not subject to the provisions of other Sunday closing laws. See generally Op. Me. Att'y Gen. (1963), reprinted in 1963-1964 Me. Att'y Gen. Ann. Rep. 50-51; Me. Legis. Rec. 1363-1365 (1959) (purpose of bill prohibiting sale of motor vehicles on Sundays was to completely curtail such sales), attached hereto as Exhibit A.

In fact, Maine's Office of the Attorney General revisited the issue of the respective applicability of §§ 3203 and 3204 following the 1990 "Sunday Sales" amendments to § 3204 and stated, in pertinent part, as follows:

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...It is worth noting that there are other provisions of the Sunday Sales Law, outside of § 3204, which deal with specific businesses or entities, and which are not affected by the amendments to § 3204. Those businesses and activities include those involving [sic] in the sale of motor vehicles, 17 M.R.S.A. § 3203...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 § 3204.

Correspondence of James E. Tierney, Attorney General, dated November 26, 1990, to all District Attorneys, (§ III, F, p. 6) attached hereto as Exhibit B. The Attorney General's opinion was later verified in a separate memorandum to William Dowling, Assistant to the Deputy Secretary of State. A copy of this Memorandum, dated 12/12/90, is attached hereto as Exhibit C.

Accordingly, at least in the opinion of Maine's Attorney General, Defendants' operation of their automobile dealerships on the dates and times set forth in the Verified Complaint and accompanying Affidavits, have been in violation of the plain provisions of Maine Law.

C. Plaintiffs Will Suffer Irreparable Harm If the Defendants' Conduct Is Not Enjoined Forthwith and the Interest of the Public Will Be secured by the Granting of the Injunctive Relief Requested.

An irreparable injury is one for which there is no adequate remedy at law. See Bar Harbor Banking & Trust Co. v. Alexander, supra. 411 A.2d at 79. There is no adequate remedy at law when the damages in an action at law are "incapable of measurement by any accurate standards owing to the fact that the elements of reasonable certainty would have been wanting", Wilson & Sons v. Harrisburg, 107 Me. 270, 219, 77 A. 787 (1910). Thus, for example and by analogy, a continuing nuisance has been deemed to produce irreparable injury because "the remedy at law would not have been as practical and efficient as in equity but would have been incomplete and inadequate." Id.; see also Gillison v. Farrin, 632 A. 2d 143, 144 (Me. 1993).

An irreparable injury is easily discernible in the present instance. By flagrantly violating Maine law, Defendants are able to flout the will of the people as expressed through the legislative process in order to gain a competitive edge and economic advantage over other dealerships that would be

difficult to ascertain and adequately address in an action at law for damages. The equitable remedy sought herein clearly is the only appropriate and complete one available.

Moreover, there is a strong expression in § 3203 that there is a great harm occurring when non-exempt and prohibited Sunday sales occur, inasmuch as such persons are per se labeled "disorderly persons", and the legislative history and subsequent case law aptly demonstrates the strong public policy behind such a law. See, e.g., Opinion of the Justices, 159 Me. 410 (1963); Me. Legis. Rec., infra., see also State v. S. S. Kresge, Inc., 364 A.2d 868 (Me. 1976). (Sunday closing laws are intended to provide a day of rest and recreation in each week for the greatest possible number of citizens and are designed to eliminate concentrations of traffic and the hustle and bustle tending to create unreasonable interference with the efforts of the vast majority of the citizens to find rest and leisure on Sunday.)

By the same token, it is clear that the public interest will not be adversely effected by the granting of an injunction. Maine law has carefully delineated the exemptions and permissible operations not in violation of the prohibitive sections of § 3203, all pronouncements of the people of the State of Maine. Accordingly, the public interest reflected in the statute does not weigh in favor of the operation of the dealerships in violation of the Sunday closing law.

D. The Injury Visited Upon Plaintiffs
and the Public Far Outweighs Harm
Which the Granting of Injunctive Relief
Would Inflict on the Offending Dealerships.

Finally, requiring the Defendants to cease and desist their activities in violation of Maine law will visit no harm upon the Defendants. Defendants have been established businesses, in their current location, for extended periods of time well in excess of one year. Neither Defendant has attempted to open on a Sunday prior to November 13 ,1994. There is no established pattern of business to be lost, and no significant business opportunity in the community lost since all dealers are required to be closed, and are closed, on Sundays. At most, the Defendants will be precluded from continuing to reap the benefits of illegal conduct. The burden and cost of desisting from doing that which the dealership has no right to do in the first instance, is not a cognizable harm. See Department of Environmental Protection v. Emerson, 563 A.2d 762 770 (Me. 1989). If the Defendants desire to do business on Sundays, they should turn to the legislative forum to alter the existing laws.

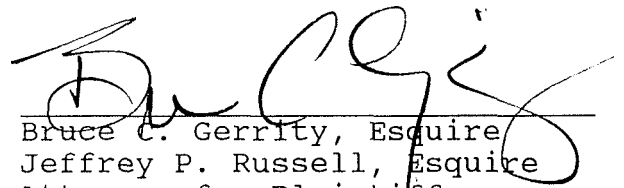
CONCLUSION

The Plaintiffs' Motion for a Temporary Restraining Order must be granted. Maine law clearly prohibits operating automobile dealerships on Sundays pursuant to 17 M.R.S.A. § 3203. The Defendants operated dealerships on Sundays.

Moreover, there are, as a matter of policy, ample reasons for this Court to require the cessation of such business temporarily pending entry of permanent relief. Accordingly, Plaintiffs respectfully requests that this Honorable Court enter the relief requested herein forthwith.

DATED at Augusta, Maine this 16th day of November, 1994.

Respectfully submitted,



Bruce C. Gerrity, Esquire
Jeffrey P. Russell, Esquire
Attorney for Plaintiff
Forest City Chevrolet/Saab and
Maine Automobile Dealers
Association, Inc.

PRETI, FLAHERTY, BELIVEAU & PACHIOS
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P. O. Box 1058
Augusta, ME 04332-1058
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apt to be reached. *State v. Johnson*, 20 Mont. 367, 51 P. 820. In *State v. Cave*, 20 Mont. 468, 52 P. 200, the court was presented with the task of determining "the scope of the expression 'additional school facilities.'" That court said the following, among other things:

" . . . It seems to us that the words 'additional school facilities' embrace some at least of the means necessary to 'support' or 'maintain' schools. It is not to be inferred, however, from anything said in this opinion, that the purchase of lots, or building of school houses, or the removal thereof, or building additions thereto, is included within the meaning of, 'additional school facilities,' for the statute expressly distinguishes each of these purposes from the other and from such 'school facilities.' . . . We think 'additional school facilities' mean facilities in addition to or beyond those already possessed. . . ."

" . . . To provide, when reasonably necessary or convenient, more school rooms, is to furnish additional school facilities."

In *Cave* the court said that "the words 'additional school facilities' . . . certainly embrace more than apparatus or appliances for teaching." The court borrowed from Roget's Thesaurus which gives "aid," "assistance" and "help" as equivalents of the word "facility." To be sure, a school administrative office center would be of aid, assistance and help to the school district. The proposed office, then, is a facility and qualifies for aid with as much merit and according to the same guidance principles applicable to "more school rooms," i. e., that such facilities be "in addition to or beyond those already possessed" and when such facilities are "reasonably necessary."

JOHN W. BENOIT
Assistant Attorney General

May 21, 1963

To: Colonel Robert Marx, State Police

Re: Sunday Sales of Mobile Homes

You ask whether Chapter 134, § 38-A, R. S. 1954, as amended, is applicable to the provisions of Chapter 134, § 38-B, R. S. 1954, as amended. We answer in the negative.

Chapter 134, § 38-A, states:

"Local option. — In any city or town that shall vote as herein after provided, it shall be lawful to keep open to the public on the Lord's Day and aforementioned holidays, other places of business *not exempted under section 38*. This provision shall not be effective in any municipality until a majority of the legal voters, present and voting at any regular election, so vote. The question in appropriate terms may be submitted to the voters at any such election by the municipal officers thereof, and shall by them be so submitted when thereto requested in writing by 100 legal voters therein at least 21 days before such regular election; nor shall it

be effective in any town until an article in such town warrant so providing shall have been adopted at an annual town meeting. When a city or town has voted in favor of adopting the provisions hereof, said provisions shall remain in effect therein until repealed in the same manner as provided for their adoption. (1959, c. 302, § 2. 1961, c. 362, § 2.)" (Emphasis supplied).

Section 38-B makes it illegal to sell mobile homes on Sunday. Section 38, the general "Sunday law" section lists many exceptions to the closing law. Section 38-A sets the procedure for a local option to keep open "other places of business not exempted under Section 38." In other words, municipalities are free to enlarge the list of exemptions, unless otherwise prohibited by law. Section 38-B is a specific mandate of the legislature, and is not subject to the local option provision. By its very existence, Section 38-B falls beyond the purview of the local option section.

In conclusion, Section 38-B is not affected by a vote of the municipality, pursuant to the provisions of Section 38-A.

Sincerely,

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

May 22, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Recount of Local Referendum Ballots

You have received a request from two residents of a town for a recount of the referendum ballots voted on at a special town meeting election held to decide if the town shall join other towns in a School Administrative District.

You ask if the Secretary of State has jurisdiction to supervise a recount in such an election.

Answer: Yes.

The election was held pursuant to R. S. 1954, chapter 41, section 111-F, subsection IV. Under this subsection the School District Commission, after certain formalities have been performed, orders the question of the formation of the proposed School Administrative District to be submitted to the legal voters of the municipalities involved.

"The order shall be directed to the municipal officers of the municipalities which propose to form a School Administrative District, directing them to call town meetings or city elections, as the case may be, for the purpose of voting in favor of or in opposition to each article in the following form:"

There is nothing more in chapter 41 concerning the manner of holding the election. The statute contemplates a town meeting to be held in accordance with the general law or local charter, if any.

The town of Cumberland was granted a charter by Private and Special Laws, 1821, chapter 78. This act simply incorporated the town of Cumberland. It does not provide for any election procedures. Hence, town meetings would be governed by the general law in R. S. 1954, chapter 90-A.



JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

November 26, 1990

Michael Cantara
District Attorney-Elect
York County Courthouse
Alfred, ME 04002

Stephanie Anderson
District Attorney-Elect
Cumberland County Courthouse
142 Federal Street
Portland, ME 04101

Janet Mills
District Attorney
Androscoggin County Courthouse
Two Turner Street
Auburn, ME 04210

David W. Crook
District Attorney
Kennebec County Courthouse
95 State Street
Augusta, ME 04330

Christopher Almy
District Attorney
Penobscot County Courthouse
97 Hammond Street
Bangor, ME 04401

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District Attorney
Knox County Courthouse
62 Union Street
Rockland, ME 04841

Michael E. Povich
District Attorney
Hancock County Courthouse
60 State Street
Ellsworth, ME 04605

Neale T. Adams
District Attorney
Aroostook County Courthouse
240 Sweden Street
Caribou, ME 04736

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.

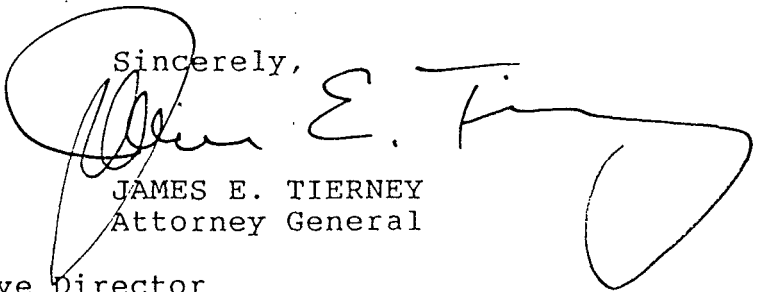
F. Certain Businesses

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".

§ 2932. Penalty

A violation of this chapter is a Class D crime.

1987, c. 515, § 2.

WESTLAW Electronic Research

See WESTLAW guide following the Preface of this supplement.

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.

Notes of Decisions

1. State legislator

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

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.

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 R.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; 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; 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

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.

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 pro-

claimed 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.

Department of Attorney General

MEMORANDUM

To: William Dowling
Assistant to the Deputy
Secretary of State

From: Stephen Dassatti, Assistant Attorney General *SD*

Date: December 12, 1990

Subject: Sunday Automobile Sales

The recent referendum on Sunday Sales does not alter the prohibition on Sunday sales of new or used cars contained in 17 M.R.S.A. § 3203 (1983). The referendum only affects 17 M.R.S.A. § 3204 (Supp. 1990). This advice is consistent with the advice of the Attorney General in Section F of a November 26, 1990, letter to the District Attorneys.

SD/jej