

With kindest personal regards, I am

Sincerely yours,

(s) J. MILLARD TAWES,

Governor.

JMT/S/mw

April 30, 1959.

Honorable J. Millard Tawes
Governor of Maryland
Annapolis, Maryland

Dear Governor Tawes:

At your request, we have examined House Bill No. 265. Although the State of Maryland appears to have the right under its police power to control the alcoholic beverage business—even to the point of establishing minimum retail prices—we have serious doubt as to whether the present bill constitutes a valid exercise of that power.

The bill commences with a legislative declaration that it is the policy of the State “to encourage the maintenance and observance throughout the State of uniform resale prices at all levels in the sale and distribution of wines and liquors for the purposes of (a) eliminating price wars which unduly stimulate the sale and consumption of wines and liquors, (b) bringing about the orderly sale and distribution thereof, and (c) fostering and promoting temperance.” The bill contains a further legislative declaration to the effect that the members of the industry have obstructed the fulfillment of this policy by their failure adequately to make and enforce fair trade contracts as now authorized by law.

It then authorizes and directs the Comptroller to promulgate regulations requiring the filing of a schedule of minimum consumer prices “for each brand of liquor or wine by bottle and/or case, the container of which bears a label stating the brand or the name of the owner or manufacturer”. The price so posted is required to be uniform throughout the State and to remain in effect until changed in the manner provided for in the bill.

The sale by any retail dealer of liquor or wine for less than the minimum resale price so posted is prohibited, except upon permission of the Comptroller “granted for good cause shown and for reasons not inconsistent with the purposes” of the bill. The Comptroller is given authority to “suspend or revoke, after a hearing, the license of any licensee who shall fail to comply with the provisions” of the bill “or any regulation promulgated under the authority contained” therein.

Additional provisions of the bill deal with enforcement aspects.

If we were dealing with a bill which prohibited the sale of alcoholic beverages below certain minimum retail prices *anywhere in Maryland*, it would be very much like those statutes in force in a large number of States (see Annotation 14 A.L.R. 2d 699). It is to be noted, however, that Montgomery, Somerset, Harford, Wicomico and Worcester Counties are exempted from the provisions of the bill. It is true that each of these counties has a county dispensary system, but the bill does not even suggest that as a justification for their exclusion. In fact, the bill on its face indicates to the contrary.

The exclusion of Montgomery County was clearly not made on the basis of its having a county dispensary; it was exempted solely on