

Memorandum by the Minister of Justice
General Policy and Legislation for amending the
Shops and Hawkers (Business Hours) Act 1957

Act XXIV of 1957 was promulgated with the aim of regulating the business hours of shops and hawkers. As an instrument it is a ~~rapid~~^{radical} measure meant at tackling "funditus" a long-standing problem and it brought in its wake certain repercussions in that a variety of conditions differ even in a small Island like Malta between one district and another.

It appears that the Act was enacted at the instance of the Director of Emigration, Labour and Social Services as the position prior to this law was continually involving the Labour Division in various litigations between employers and employees. At the back of this legislative measure, representations were made by various Unions, with the Retailers' Union as the chief spokesman.

The law is interdependent in its mechanism. Some licences pertaining to one particular trade might be exempted under section 5 and others under section 7 enjoy a relative exemption. Often you get several trades or businesses pertaining to the same owner exercised in one and the same premises.

The Department of Emigration, Labour and Social Welfare, the Tourist Board, and the Police are all interested in mechanism of this particular law.

Apparently a policy was agreed upon between the Police, the D.E.L.S.W. and the Secretariat under the former administrations not to apply the law rigidly, as it was understood that if the provisions of the Act adhered to strictly all shops in Valletta would be made to close. Cafés selling pastry would be contravening the law unless this is consumed on the premises. A wines and spirits shop and tobacconists exhibiting a cigarette lighter and accessories, such as flint, would also be contravening the law, as the exempted items in terms of the law is the sale of drinks by the tot and cigarettes and matches. Occasionally when a change of a police superintendent or police officers occurs in a district, the tacitly agreed upon policy is varied with the result that tobacconists and owners of wines and spirits shops are intimated that they should close their shops on Sundays. The same circumstances obtain with regard to newspaper vendors who exhibit items which are not exempted in terms of the law. There have been cases of prosecutions which invariably bring about a string of petitions to the Governor in their wake.

An ex professo judgment was delivered by the Hon. Mr Justice Harding in re: "The Police vs. Gio Maria Galea et" delivered by the Criminal Court of Appeal on the 17th of June, 1961. The Court held that when an owner of a business premises carries on more than one trade in one particular premises only one of which is exempted, then according to section 9 of Act XXIV of 1957 the shop should close.

The learned judge quoting Portalis said "Quando il testo della legge è chiaro non è lecito di eluderne la lettera sotto pretesti di penetrarne lo spirito".

In the face of this judgment it has even been made clearer that all the shops opening on Sundays in Valletta are contravening the law.

In order to bring into line the position obtaining with law, following a meeting between a representative of the Commissioner of Police, the D.E.L.S.W. and a law officer of the Attorney-General's Office it was agreed that section 9 of the Act should be repealed and substituted by Government Notice 284 (Order) IV of 1939 adding a heavier penalty and suspension of licence for eventual transgressors. Perhaps sections 5 and 7 of the Act should also be touched upon to render them more harmonious with the envisaged amendment.

This being a matter of major policy I would think it proper to raise the subject at ministerial level for approval.

9th February, 1963.