

MAINE STATE LEGISLATURE

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June 30, 1939

To the Attorney General from the Assistant assigned to M. U. C. C.

Re: Proposed Regulation with Respect to Disclosure of Official Information

Section (11)(g) of the Unemployment Compensation Law reads in part as follows:

"Information thus obtained. . . shall. . . be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties). . ."

This provision of the statute has given rise to a number of confusing situations so that the Commission has decided that it is advisable to issue a regulation governing the circumstances under which official information may be disclosed. The Social Security Board has issued a number of pronouncements interpreting this section of the Law as it appears in the Laws of a number of the States. One interpretation submitted to the Unemployment Compensation Commission reads in part as follows:

"The phrase 'other than to public employees in the performance of their public duties' represents a permitted exception to disclosures otherwise expressly prohibited by the statute. It does not mean that information must be made available to public employees. Unless other State Legislation governs the disclosure of information, the State Agency is left free to determine under what circumstances, in the performance of what public duties, and to what extent it will release confidential information reported by an employing unit or individual claimant."

In drafting the proposed regulation for the Maine Commission, I provided that disclosure of records or information was to be authorized in the following cases:

(a) to any claimant for benefits under the Unemployment Compensation Law or his duly authorized representative to the extent necessary for the proper presentation of his claim;

(b) to any public employee of the Federal, State, County or Municipal Governments when the request for such disclosure is in connection with the performance of such employee's public duties, but such authorization shall not include permission for a general inspection of the files;

(c) to any tribunal hearing a case under the criminal statutes of the State when the disclosure is sought by the presiding justice or any law enforcement official participating in the hearing.

The Social Security Board takes exceptions to the provisions of items (b) and (c) above. They "suggest" that item (b) be limited to employees of relief agencies and that item (c) be dropped entirely from the proposed regulations. Their only justification for the suggestion is that the statute is permissive in that it permits an exception to a prohibition.

My interpretation, about which you and I conversed over the telephone, is that the exception is not a permissive exception but is a specific exception which should apply to all public employees and that it is not within the discretion of the Commission to say which public employees are entitled to the information and which are not; that since this is a specific exception to a prohibition all classes of persons who come within the specific exception shall be treated alike.

We know from certain other communications received from the Social Security Board that part of their thinking is motivated by a desire that "nothing be written into the regulation which would in any way imply an assumption of, or a connection with, the policing powers". The Unemployment Compensation Commission not only agrees with my reasoning as to the meaning of the statute but also is very desirous of cooperating in every way possible with every other Agency of the State. The Commission believes that any assistance it can render to a public employee in the performance of public duties should be rendered whether that employee be connected with a relief agency, police agency or whatnot. The Commission does not desire to say that information in its possession will be given to certain public employees and will not be given to other public employees. It is my personal opinion, for example, that a claimant who is wanted for a criminal offense is not entitled to any protection that he might get from the Unemployment Compensation Commission by virtue of holding his address confidential. I believe that holding the records confidential to such an extent is the result of warped social thinking.

If you agree with my opinion as to the meaning of Section (11) (g) of the Law, the Commission would like to have a statement from you in writing as to your interpretation of the scope of the parenthetical expression obtained in that section. For your use, should you desire to sign the same, I am enclosing herewith a statement which I believe covers the matter.

John S. S. Fessenden
Assistant Attorney General

July 27, 1939

Dear John:

I have read your very excellent analysis of that part of the Unemployment Compensation Law which relates to the disclosure of official information, and have signed and am enclosing the statement which you prepared and sent to me for my signature.

I think you have worked the matter out in a very helpful way and I fully agree with your conclusions.

Apparently your letter was addressed to me the day after I left to attend the National Convention of Attorneys General at San Francisco. . . which accounts for the delay in replying to you.

Very truly yours,
Franz U. Burkett
Attorney General