

MAINE STATE LEGISLATURE

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February 6, 1964

Marion E. Martin, Commissioner

Labor and Industry

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Maine State Apprenticeship Council

FACTS:

The Voluntary Apprenticeship Law gives to the State Apprenticeship Council certain powers. R. S. ch. 30, § 149, provides in part:

"The council shall:

"I. Establish Standards. Establish standards, through joint action of employers and employees, and assist in the development of apprenticeship programs in conformity with sections 148 to 154, and generally encourage and promote the establishment of apprenticeship programs . . .

"VF. Rules and Regulations. Issue such rules and regulations as may be necessary to carry out the intent and purpose of sections 148 to 154."

Section 151 provides in part:

"Standards for apprenticeship agreements shall contain the following:

"VIII-A. No discrimination. Provision that there will be no discrimination in employment of apprentices under the program because of sex, race, creed or color;

"IX. Additional Standards. Such additional standards as may be prescribed in accordance with sections 148 to 154."

QUESTION NO. 1:

May the Maine Apprenticeship Council adopt rules requiring that the sponsor of a program publicly disseminate information about availability of apprenticeship opportunities - publicly disseminate meaning, under the terms of the Federal rules, that they notify the placement bureau of the local schools and the local employment service - and that vacancies in the apprenticeship rolls exist?

ANSWER NO. 1: Yes.

REASON:

The provisions of ch. 30, sections 148 to 154, apply only to those persons, firms, corporations or crafts that voluntarily accept the law. There is nothing mandatory about an employer working with or under the Apprenticeship Council.

If an employer does elect to do so he must do so within the framework of the law and proper regulations issued by the Council.

The main limitations upon issuing rules and regulations are that they be (1) reasonable; (2) not discriminatory against persons in the same class; and (3) not contrary to the statute to which they refer.

A regulation requiring a sponsor of a program to publicly disseminate information concerning the availability of apprenticeship opportunities should be well within the power granted the Council by section 149 VI.

QUESTION NO. 2:

Does the Maine State Apprenticeship Council have authority to adopt rules and regulations prescribing the manner in which apprentices must be selected and that they be selected on the basis of qualifications alone? Specifically, can they require that applicants be selected on comparative qualifications alone and that all such applicants be ranked on the basis of criteria which measure comparative qualifications and that selection must be on the basis of the rankings?

ANSWER NO. 2: Yes.

REASONS:

The answer to question No. 1 is incorporated here. In addition, section 151 VIII-A forbidding discrimination because of sex, race, creed or color enters the picture. In order to be free of claims of discrimination, valid or otherwise, it is advisable to select apprentices on the basis of qualifications. There are areas which are not prohibited which might be valid. Examples might be, relationship to a present employee of sponsor; residence in the immediate area; physical handicap, and possible others. These would not be discrimination within section 151 VIII-A.

February 6, 1964

Care must be taken in drafting such regulations to not make them so strict that a sponsor has no leeway as to selection of apprentices. On the other hand, a regulation should not have a general provision allowing a sponsor to ignore qualifications when he so desires.

QUESTION NO. 3:

If the answer to "2" is "Yes", in order to determine compliance with such a rule may the Maine Apprenticeship Council adopt rules and regulations that records be kept of all interviews, not only of those selected, but those not selected, and require such records be kept on file for a period of two years?

ANSWER NO. 3: Yes.

REASON:

It is necessary for the Council to be able to follow up its regulations to see they are obeyed. It would be entirely reasonable to require a sponsor to keep records and for some period of time retain them.

QUESTION NO. 4:

May they also set up a rule for the orderly processing of complaints of discrimination by interested parties?

ANSWER NO. 4: Yes.

REASON:

The law forbids discrimination because of certain factors. It is necessary for the council to have an orderly method of processing complaints. None is provided by statute so it must be provided by regulation.

George C. West
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