

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

10
January 12, 1965

Marion E. Martin, Commissioner

Labor and Industry

George C. West, Deputy

Attorney General

Re: Apprenticeship Council Authority

In your memo of December 31, 1964, you have asked four questions. There is apparently no factual situation involved and the questions relate to the general relationship of the State Council and the U. S. Department of Labor.

QUESTION NO. 1.

May the Apprenticeship Council under Title 26, Sections 1002 and 1004, adopt rules and regulations regulating the method of employment of apprentices?

ANSWER NO. 1.

See Opinion No. 1 for answer.

OPINION NO. 1.

See opinion of this office dated February 6, 1964, which answers this general question.

In reading the three remaining questions it would appear that this question should be worded somewhat differently. Apparently the Council wishes to know if it may adopt the U. S. Department of Labor regulations in the field of nondiscrimination in Apprenticeship and Training.

There is only one way the Council could adopt the Federal regulations. The Council may copy the Federal regulations and issue them as their regulations. When new amendments are made in the Federal regulations, the Council must make the same amendments if it desires them. This would, of course, necessitate certain changes to allow enforcement by the State agency. Enforcement cannot be delegated to a Federal agency.

It would not be possible to adopt the Federal regulations by reference. To do so would place supervision and enforcement in the Federal government. A State department cannot do this by regulation.

It would be somewhat doubtful that the U. S. Department of Labor regulation Title 29, Part 30 - Nondiscrimination in Apprenticeship and Training, would be approved by this office. It is considerably broader than the statute authorizing the establishment of standards by the Council. See sec. 30.7 (a).

Section 1004 provides for state standards prohibiting discrimination "because of sex, race, creed or color." The aforementioned section of Title 29, Part 30, has additional prohibition of discrimination because of "occupationally irrelevant physical requirements." Such is not authorized by Section 1004.

In addition, it leaves to the discretion of the Administrator approval of programs which may not comply with the regulations. See section 30.4 (b) (2). Such a provision would not be approved by this office if contained in regulations adopted by the Council.

QUESTION NO. 2.

May the Apprenticeship Council delegate to field representatives of the Bureau of Apprenticeship and Training, U. S. Department of Labor, the Council's implied authority to check that the standards provided for in Title 26, Section 1004 are met by the employer?

ANSWER NO. 2.

No.

OPINION NO. 2.

The Apprenticeship Council is a State agency. It may adopt its own rules and regulations. It would have no authority to delegate any of its powers or duties to Federal personnel. An employee of a Federal agency could not enforce the laws of a state.

QUESTION NO. 3.

Does the Apprenticeship Council have authority to terminate or cancel the registration of an apprenticeship program that violates any of the provisions of the agreement set forth in Section 1004?

ANSWER NO. 3.

Yes.

OPINION NO. 3.

This is clearly stated in Title 26, M.R.S., Section 1002. It is there provided that the council shall, "Register or terminate or cancel the registration of apprenticeship programs and apprenticeship agreements."

This is clear authority for the council to terminate a program. Rules and regulations may be adopted providing a method for terminations. Any method should include a provision for a hearing before the council to determine whether or not a program is to be terminated.

(a) Does the Council have authority to give public notice of its cancellation?

Only if and under such conditions as it may prescribe by its regulations. I would not favor a paid notice of such cancellation. It would be more preferable to have a news release in connection with a hearing and decree of cancellation by the Council. Conversely, if the Council does not cancel after a hearing such information should be available to the press. To do otherwise could cause repercussions quite unfavorable to the Council.

QUESTION NO. 4.

Does the Apprenticeship Council have authority to report to the U. S. Department of Labor, Bureau of Apprenticeship and Training, whenever it found there was a violation of Section 1004, subsection 9?

ANSWER NO. 4.

Yes.

OPINION NO. 4.

The actions of the Council are of a public nature and hence available to all. Section 1002 requires the Council to make a report of its activities to the Governor and to incorporate the same in the biennial report of the Commissioner of Labor and Industry. It is to be expected such a report would include violations and actions taken thereon so it would be natural for such a report to be forwarded to the U. S. Department of Labor.