

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

For the foregoing reasons, it is our opinion that it would not be proper for the State to appropriate its funds for general use by the private Minnesota corporation.

MARTIN L. WILK
Assistant Attorney General

October 4, 1972
Human Rights Commission

Robert Talbot, Executive Sec.

Interpretation, Maine Human Rights Act (Ch. 501 PL 1971)

SYLLABUS:

The Maine Human Rights Commission does not possess the power to issue subpoenas on its own pursuant to 5 M.R.S.A. § § 4566, sub-§ § (4) and (12) because those sections do not specifically confer such power upon the Commission.

FACTS:

5 M.R.S.A. § 4566 sets forth the powers and duties of the Maine Human Rights Commission. The section provides:

“The Commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limiting the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons, excepting law enforcement agencies and courts of this State and the United States. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State.

“To carry out these duties, the Commission shall have the power:

* * * * *

“4. Hearings. To hold hearings, administer oaths and to take the testimony of any person under oath. There shall be no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States shall be privileged from compulsory testimony or production of documents before the commission. Such hearings and testimony may relate to general investigations concerning the effectiveness of this Act and the existence of practices of discrimination not prohibited by it, as well as to the investigations of other alleged infringements upon human rights and personal dignity. The Commission may make rules as to the administration of oaths, and the holding of preliminary and general investigations by panels of commissioners and by the executive secretary.

* * * * *

“12. Other acts. To do such other things as are set out in the other subchapters, and everything reasonably necessary to perform its duties under this Act.”

The Human Rights Commission has inquired whether the foregoing provisions empower it to issue subpoenas ducas tecum and subpoenas ad testificandum on its own.

QUESTION:

Does the Maine Human Rights Commission possess the power to issue subpoenas on its own pursuant to 5 M.R.S.A. § 4566, sub-§ (4) and (12)?

ANSWER:

No.

REASONS:

The law is well settled that an administrative agency possesses no inherent power to issue subpoenas, but may only do so when expressly authorized by statute. Cooper, *State Administrative Law*, Vol. 1, Chapter X, Section 3, pp. 295-296, and cases cited therein; *Andrews v. Nevada State Board of Cosmetology*, 467 P. 2d 96 (Nevada Supreme Court 1970); *Donatelli Building Co. v. Cranson Loan Co.*, 140 A.2d 705, 87 R.I. 293 (1958). This general principle has been succinctly summarized by the Court in *Andrews, supra*, at pp. 96-97, as follows:

“The Board is a state administrative agency created by the Legislature . . . Its powers are limited to those powers specifically set forth in chapter 644. As an administrative agency the Board has no general or common law powers, but only such powers as have been conferred by law expressly or by implication . . . Official powers of an administrative agency cannot be assumed by the agency . . . There is no authority in chapter 644 giving the Board the power to issue subpoenas.”

In the instant case the term “subpoena” does not appear anywhere in the statute pertaining to the Human Rights Commission. There are no penalties set forth for failure or refusal to testify before the Commission or for failure or refusal to produce documentary material at the request of the Commission.

While the Commission’s investigatory powers are expressed in broad language, the legislature could have specifically provided the Commission with the power to require the attendance of witnesses and the production of documents, if it had intended the Commission to have such power. See e.g. subpoena power of Water and Air Environmental Improvement Commission, 38 M.R.S.A. § 586; subpoena power of Maine Housing Authority, 30 M.R.S.A. § 4651 (8). We conclude that by omitting any reference to subpoena power, the legislature has indicated its intention not to provide the Human Rights Commission with such power.

For the foregoing reasons, it is our opinion that the Maine Human Rights Commission does not possess the power to issue subpoenas on its own pursuant to 5 M.R.S.A. § 4456, sub-§§ (4) and (12).

MARTIN L. WILK
Assistant Attorney General