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October 11, 1972

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Human Rights Commission

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Attorney General

**Substantial Equivalency of Maine Fair Housing Statutes with
Title VIII of U. S. Civil Rights Act of 1968**

SYLLABUS:

The Maine Human Rights Act, 5 M.R.S.A. §§ 4551 et seq. does not provide rights and remedies which are substantially equivalent to the rights and remedies provided by Title VIII of the U. S. Civil Rights Act of 1968 (Pub.L. 90-284) for purposes of Section 810 (c) of Title VIII. The Maine Act is deficient in two areas, namely: (1) The Maine Human Rights Commission does not possess adequate powers to conduct investigations of complaints because it does not have the power to subpoena records, documents and individuals, and (2) coverage of housing accommodations by the Maine Act is not sufficient because the statutory exception relative to nonprofit religious and fraternal corporations is too broad.

FACTS:

In 1971, the State Legislature enacted a Bill entitled the "Maine Human Rights Act", 5 M.R.S.A. §§ 4551 et seq. Among other things, the Act establishes a Maine Human Rights Commission which is empowered to receive and investigate complaints referred to it by the U. S. Department of Housing and Urban Development (HUD) regarding discrimination in housing.

As a prerequisite to HUD referring such complaints to the Maine Human Rights Commission, the Maine fair housing statute (§§ 4581 - 4583 of the Maine Human Rights Act) must provide rights and remedies substantially equivalent to the rights and remedies provided by Title VIII of the U. S. Civil Rights Act of 1968 (Pub. L. 90-284). The prerequisite of substantial equivalency is set forth in Section 810 (c) of Title VIII as follows:

"Whenever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate

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State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law " (Emphasis supplied.)

HUD has established criteria for determining substantial equivalency. These criteria are set forth in 24 C.F.R. Chapter 1, Subchapter A, Section 115.3 (promulgated on August 16, 1972) as follows: See Attached.

The HUD Regional Counsel's Office has reviewed the Maine Act and has concluded that there are three areas in which the Maine fair housing statutes do not provide rights and remedies for discriminatory housing practices which are substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968. They are:

(1) The Maine Human Rights Commission does not possess adequate powers to investigate the allegations of a complaint because it does not have the power to subpoena records, documents and individuals.

(2) Coverage of housing accommodations by the Maine statute is not sufficient because the statutory exception relating to religious organizations is too broad, and

(3) Coverage of practices prohibited by the Maine statute is not sufficient because the statutory prohibition against falsely representing that a dwelling is not available for inspection, sale or rental is explicitly applicable only to real estate brokers or salesmen or their agents, and not to owners, lessees, sublessees and other such persons.

A copy of the Regional Counsel's letter to the Chairman of the Maine Human Rights Commission setting forth the foregoing determinations is attached hereto.

The Maine Human Rights Commission has requested that we render our opinion on the question whether substantial equivalency exists between the pertinent portions of the Maine Act and Title VIII of the Civil Rights Act of 1968. The Commission also has requested that in the event it is our opinion that substantial equivalency does not exist, we advise it concerning the kind of amendatory legislation which is necessary to cure the deficiencies.

No rules or regulations have been adopted or promulgated by the Maine Commission which would have any bearing on the question before us.

QUESTION:

Does the Maine Human Rights Act provide rights and remedies substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968 as required by Section 810 (c) of Title VIII?

ANSWER:

No. The Maine Act is not equivalent in terms of subpoena power or in terms of the scope of coverage of housing accommodation subject to the provisions of the fair housing statutes.

REASONS:

As pointed out by the Regional Counsel, Section 811 of Title VIII gives the Secretary of HUD the power to subpoena records, documents and individuals in connection with its investigations. The Maine statutes do not empower the Maine Human Rights Commission to issue subpoenas or otherwise compel access to possible sources of evidence, as we stated in our opinion to the Human Rights Commission dated October 4, 1972.

Accordingly, we agree with the Regional Counsel that, for purposes of substantial equivalency, the Commission lacks adequate powers to investigate the allegation of a complaint. In our opinion, this deficiency can only be cured by a legislative amendment which expressly confers subpoena power upon the Commission.

Both Title VIII and the Maine Act have exemptions relating to religious organizations and private clubs. The exemption in VIII is set forth in Section 807, which provides:

"Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members."

The exemption in the Maine Act is set forth in Section 4554 (6) which provides, in pertinent part:

" 'Housing accommodation' includes any building or structure or parts thereof . . . excepting:

* * *

c. The rental of any dwelling owned or controlled by a religious or fraternal corporation nor organized for private profit and not in fact conducted for private profit."

We agree with the Regional Counsel's determination that the Maine exception is far broader than the Title VIII exemption. The Maine statutory provision creates a blanket exception to the definition of the term "housing accommodation", as that term is used in the Act. There are no restrictions on the kind of discrimination which may be engaged in under the exception.

On the other hand, the Title VIII exemption is quite narrow, by comparison, strictly limiting the kind of discrimination that is permissible for religious organizations. Title VIII would necessarily prohibit a nonprofit religious corporation from discriminating on any basis other than giving a preference to persons of the religious organization -- the Maine Act would not. Title VIII would necessarily prohibit a nonprofit religious corporation from discrimination in the rental of a dwelling owned and operated by it for a commercial purpose -- the Maine Act would not. We would suggest that these deficiencies also be corrected amending the exception with specific, more restrictive language.

HUD's Regional Counsel is of the opinion that because the prohibition against falsely representing that a dwelling is not available for inspection is expressly stated in the Maine Statute only with respect to brokers, that this prohibition does not apply to owners, lessees, etc. We feel such an interpretation is overly restrictive and misconstrues the meaning of § 4582.

Section 804 (d) of Title VIII provides that it shall be unlawful:

"To represent to any person because of race, color, religion or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

Section 4582 of the Maine Act provides that it shall be unlawful:

"For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the race or color, religion or country of origin of any prospective purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual such housing accommodation because of the race or color, religion or country of ancestral origin of such individual, . . . or to discriminate against any individual because of his race or color,

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religion, or country of ancestral origin in the price, terms, conditions or privileges of the sale, rental or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith, "

"For any real estate broker or real estate salesman, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any such accommodation listed with him for sale, lease or rental, because of the race or color, religion or country of ancestral origin of such applicant or of any intended occupant of such accommodation, or to misrepresent, for the purpose of discrimination on account of the race or color, religion or country of ancestral origin of such applicant or intended occupant, the availability or asking price of a housing accommodation listed with him for sale, lease or rental " (Emphasis supplied.)

In our opinion, the emphasized language would embrace false representations that a dwelling is not available for inspection. The purpose for including a specific reference to this kind of activity in conjunction with the prohibitions specifically relating to brokers lies in the fact that brokers have access to several dwellings at one time and are, by virtue of their profession, more apt than owners, lessees, sublessees, etc. to be making representations concerning availability of housing for inspection. In other words, the explicit reference to the prohibition in the case of brokers is a specific instance of the more general prohibitions set forth for owners, lessees, brokers and salesmen alike.

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