

MAINE STATE LEGISLATURE

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October 4, 1973

Robert E. Talbot

Maine Human Rights Commission

Eliot Field, Assistant

Attorney General

Does Federal Labor Department's request re disclosure of aliens for referral to employment or training violate Human Rights Act of Maine?

This is in response to your request dated August 23, 1973, for an opinion as to whether implementation of a Department of Labor directive would violate the Maine Human Rights Act, specifically Title 5 M.R.S.A. § 4572, sub-§ B and sub-§ D. The directive would require aliens and citizens to identify themselves as one or the other and require aliens to submit proof of their right to work in the United States.

Section 4572, sub-§ B states that it is "unlawful employment discrimination" for any employment agency to fail to refer to employment or otherwise discriminate against any individual because of race . . . or country of ancestral origin, i.e., discrimination based on one's cultural, ethnic, or national background. Ascertain- ing an alien's status regarding his initial right, under federal immigration laws, to work in the United States would not constitute the discrimination prohibited by sub-§ B as long as the information is only used to determine one's right to work [or one's eligibility for State Employment Security Agency programs] and not for any subsequent placement or referral action. The discrimination to which sub-§ B refers would be discrimination against any members of the class of people who already have, under federal laws, a right to work in the United States. This also applies to sub-§ D which makes it "unlawful employment discrimination" to (1) elicit any information pertaining to country of ancestral origin, or (2) make records of the same, or (3) use an employment application form with questions or entries on the subject. Both these subsections and the Act as a whole are aimed at discrimination within the populace which has rights to work in this country. The language of the Act would not apply to those outside of this group, and therefore eliciting and recording information on an alien's employment rights, if used only to establish a right to work, would not constitute a violation of the Act.

Furthermore, the Act has an express exception which covers this situation. Section 4573, sub-§ 3 specifically allows the recording of data which is "required by law or by the rules and regulations of any state or federal agency provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this Act." So

information on an alien's right to work may be requested and recorded without violating the Maine Human Rights Act since this information is required by the "rules and regulations" of the Department of Labor and thus comes within the quoted sub-§ 3 above. Therefore, compliance with the directive would not violate Maine Human Rights Act.

EF/mf

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NOT A FORMAL OPINION