

# MAINE STATE LEGISLATURE

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Educational and Cultural Serv.

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The State Board of Education, within the Department of Educational and Cultural Services, has a policy on the employment of immediate family which reads:

"No member of the immediate family of any administrator of State Board controlled institutions shall be hired for employment under his administration, except upon recommendation of the Commissioner and approval of the State Board of Education.

The Department inquired as to whether this policy violated the 1972 Civil Rights Law, Executive Order 11246, and specifically the 1972 Higher Education Guidelines of the Office for Civil Rights promulgated to implement the new law and Executive Order. Section II, entitled Personnel Policies and Practices, of the Guidelines has a subheading "Antinepotism Policies" which states in part that:

"Policies or practices which prohibit or limit the simultaneous employment of two members of the same family and which have an adverse impact upon one sex or the other are in violation of the Executive Order. For example, because men have traditionally been favored in employment over women antinepotism regulations in most cases operate to deny employment opportunity to a wife rather than a husband."

It is important to note that for a violation to occur, two events must coincide. "Policies or practices" limiting simultaneous employment of family members within the same institution are not enough by themselves. They must exist and produce an "adverse impact on one sex" to violate the order.

The State Board policy does not prohibit but may limit, to some extent, simultaneous employment of family members by requiring a different hiring procedure for applicants who are in an administrator's family; that is, they must procure the Commissioner's recommendation and the approval of the State Board of Education. The actual extent of this limitation presents a factual question answerable by the Department of Educational and Cultural Services, but the wording and apparent intent of the policy and the Guidelines are not in conflict.

Under the State Board policy another member of an immediate family of an administrator may, theoretically, secure employment under that administrator, regardless of sex, by proceeding through the hiring

procedure mentioned above. There is no blanket prohibition on the employment of familial relatives. Also the policy limits only the members of an immediate family of an "administrator" of a State Board institution, not those whose immediate familial relative may be another type of employee of that institution. This narrower impact of the policy suggests that its purpose is to eliminate potential prejudice and nepotism within the hiring process, not to establish a maximum quota of employees per family per institution which quota may discriminate against women because, as the Guidelines note, "men have traditionally been favored in employment over women."

On the other hand, the Federal Guidelines are concerned primarily with the latter, with policies or practices which limit the number (usually to one) of persons from one family who may work for a given institution. The goal is to avoid broad rules against simultaneous employment and is evident in this excerpt from the Guidelines:

"State or implied presumptions against the consideration of more than one member of the same family for employment by the same institution or within the same academic department also tends to limit the opportunities available to women more than to men.

Thus, if the State Board antinepotism policy only applies to the families of employees (administrators) in a position to hire other employees, and if the theoretical possibility of circumventing the related administrator in the hiring process, by going through the Commissioner and the State Board, is a real possibility, then the policy would not contravene the Guidelines. It would simply be an attempt to cleanse the hiring process and not an attempt to set a limit on the number of persons from one family that could work for one institution or administration. In fact the Federal Guidelines make provision for just such a circumstance.

"Institutional regulations which set reasonable restrictions on an individual's capacity to function as judge or advocate in specific situations involving a member of his or her immediate family are permissible where they do not have the effect of denying equal employment opportunity to one sex over the other."

The policy in question appears to be just such a "reasonable restriction" on an administrator's hiring powers. It is a legitimate, hopefully effective, antinepotism policy which does not on its face discriminate on the basis of sex, and is not in violation of the Federal Guidelines, the Executive Order, or the 1972 Civil Rights Law.

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**NOT A FORMAL OPINION**