

MAINE STATE LEGISLATURE

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AG *JAL - yes* ✓
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Interpretation of State's Employment Security Law

SYLLABUS:

The State Planning Office (SPO) is entitled to access to the Maine Employment Security Commission's (MESC) employment data and may summarize this data for its own use and for dissemination to other users if the anonymity of those mentioned in the data is maintained in accordance with applicable confidentiality standards.

FACTS:

MESC has extensive data and records concerning employment and unemployment within different sectors of industry and the economy as a whole, and within different areas of the State. The SPO desires access to this information so it can fulfill its function of planning and coordinating the physical development of the State. The SPO proposes to have a staff programmer work within MESC with the raw data and summarize it, arranging it by industry categories within different areas throughout the State, then making it available to the rest of SPO and others who have use for it. The summarized form would omit any specific reference to or identification of the individuals, firms or corporations named in the confidential raw data.

QUESTION:

May the State Planning Office have access to employment data from the Maine Employment Security Commission's files for use, in summary form, in its planning and coordinating functions?

ANSWER: Yes.

REASONS:

The Employment Security Commission's powers and duties with respect to records and reports are specified in T. 26 § 1082, subsection 7, which provides in pertinent part:

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"Information thus obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity...."

Note the important exception, applicable here, regarding "public employees in the performance of their public duties." Among the SPO's powers and duties, in 5 M.R.S.A. § 3305, subsection 1, is paragraph C on "Economic analysis and planning" which states that the office shall:

"Conduct continuing economic analysis of the economy and resources of the State of Maine, collect and collate all pertinent data and statistics relating thereto; participate in establishing a data and statistics center for making such material available in useful form; and assist the Governor, the Legislature and the various state departments in formulating economic goals and programs and policies to achieve such goals."

This mandate together with paragraph B, which lists many factors to be considered by the SPO in forming a comprehensive plan for the physical development of Maine, indicate that the SPO's duties encompass the use of employment data in the possession of MESAC. Therefore, the SPO staff, as "public employees, in the performance of their public duties," is entitled to access to the employment data, subject to the same confidentiality standards that apply to MESAC. The type of access outlined, i.e., to have an SPO programmer study and summarize the data by industry category and by areas (governmental units, or larger geographic areas if necessary to disguise large employers) to insure anonymity of

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employers and employees, would be within the law.

As to the SPO's use of the summarized data, it seems that under the MESAC confidentiality standards the SPO would be free to publish and disseminate such data to fulfill its planning, assistance, and coordinating functions if indeed the data is in anonymous form. The sections excerpted above is primarily concerned with confidentiality of "the individual's or employing unit's identity" (§ 1082), so if the data, as eventually published, is truly anonymous, there would be no breach of the standards.

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