

# MAINE STATE LEGISLATURE

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March 6, 1974

Richard D. Collins, Exec. Director

Arts and Humanities Commission

John W. Benoit, Jr., Deputy

Attorney General

This is a response to your inter-office memorandum dated February 13 posing the question concerning the future employment of Mrs. Anne Erwin by the Commission on the Arts and Humanities. According to the outline of facts in your memorandum, Mrs. Anne Erwin commenced employment approximately one year ago under an Elementary and Secondary Education Act, Title V, grant of funds. She joined the staff as an Arts and Humanities Associate in charge of the Artists-in-Schools program; employed as a project employee. You stated that Mrs. Erwin has done an outstanding job in developing the program into an important part of the Commission's operation. It is expected that the project will be completed about June 1, 1974.

Mrs. Erwin's husband is campaigning for the Governorship, and Mrs. Erwin has been urged to appear in the campaign. You state that the project would be severely damaged if Mrs. Erwin were lost on such short notice; and with only a few months remaining in the project, it would be impossible to get and train a replacement.

Mindful of the statutory provisions in 5 M.R.S.A. § 679 (sometimes referred to as the "Little Hatch Act"), you ask whether it would be legally possible to terminate Mrs. Erwin's employment as a project employee and to hire her under contract as an independent contractor until completion of the project or until a substitute solution can be found. From the standpoint of State law, we answer the question in the affirmative.

In light of the language in 5 M.R.S.A. § 679, it is necessary to terminate Mrs. Erwin's present employment as a project employee for the Commission on the Arts and Humanities.

"No officer or employee in the classified service of this State shall, directly or indirectly, solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution or political service, whether voluntary or involuntary, for any political purpose whatever from any officer, agent, clerk or employee of the State or from any person."  
5 M.R.S.A. § 679.

Alternatively the hiring of Mrs. Erwin as an independent contractor would not violate the provisions of the above-quoted statute.

Notwithstanding the foregoing, it must be emphasized that what is written here has no bearing whatsoever upon the question of application v. non-application of federal law in this area. We strongly urge that you contact appropriate personnel in the United States Civil Service Commission for their opinion concerning the Federal Hatch Act in view of the fact Mrs. Erwin's salary comes from federal monies. In that regard, you should be in touch with the Office of General Counsel, United States Civil Service Commission, 1900 East Street, N.W., Washington, D.C. 20415 (Tel: 202-632-7600). Nor should this memorandum be read as passing upon the policy of termination of an employee's employment and substitution of an independent contract therefore.

JWBJr./ec

**AN INFORMAL OPINION**