

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date November 6, 1974

To Nicholas L. Caraganis, Director

gub
Dept. Personnel

JCL
From Robert J. Stolt, Assistant

Dept. Attorney General

Subject Opinion request of October 23, 1974

SYLLABUS:

The Maine Human Rights Commission is prohibited by statute from investigating discrimination by law enforcement agencies, and because of such prohibition may not require the Department of Personnel to provide information relating to the Maine State Police Physical Aptitude Test.

FACTS:

The Maine Human Rights Commission has requested the names, addresses and scores of all women failing the Maine State Police Physical Aptitude Test as well as copies of the test and analysis thereof from the Department of Personnel. The request was made as part of the Commission's investigation of the supposed sexual discriminatory effects of the State Police test.

The Department of Personnel has supplied the requested copies of the test and analysis thereof, but refuses, pursuant to Department Rule 6.7, to comply with the Commission's formal request that it be provided with the names, addresses and scores of all women failing the examination. The Department of Personnel did offer to contact each of the failing applicants to ask their authorization that Rule 6.7 be waived, but that offer was not satisfactory to the Commission. The Department of Personnel, pursuant to 5 M.R.S.A. § 195, has requested the opinion of the Attorney General in this matter.

QUESTION AND ANSWER:

Whether the Maine Human Rights Commission's statutory duties and powers which include "access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence. . . ." are limited by the Department of Personnel's Rule 6.7? Upon the facts presented, it is not necessary to answer the Department's question.

REASON:

The Maine Human Rights Commission is charged by statute with the duty of investigation of all forms of invidious discrimination within the State. 5 M.R.S.A. § 4566. It may do so at its own will or upon complaint under oath from a person who has been the subject of unlawful discrimination (5 M.R.S.A. § 5612), but the Commission may not investigate on its own motion, or otherwise, alleged discrimination by law enforcement agencies. 5 M.R.S.A. §§ 4566 and 4566.4.

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As pointed out above, the Human Rights Commission has undertaken the duty of investigating certain alleged discriminatory effects of the Maine State Police Physical Aptitude Test. The Commission seeks to investigate the effects of the test by invoking its investigatory powers (5 M.R.S.A. §§ 4566 and 5612) against the State Department of Personnel. The State Department of Personnel, under these circumstances, acted as the direct arm of the Maine State Police in testing the physical aptitude of applicants to serve as State law enforcement officers. The Commission's investigatory demand is addressed to the State Department of Personnel, and under these circumstances is an investigation of employment practices of the Maine State Police. This the Commission has no authority to do. The Legislature in enacting the Maine Human Rights Act explicitly prohibited the Maine Human Rights Commission from conducting investigations of discrimination by law enforcement agencies.

"The Commission. . . has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons, excepting law enforcement agencies and courts of this State and the United States." 5 M.R.S.A. § 4566.

". . . There shall be no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States shall be privileged from compulsory testimony or production of documents before the Commission." 5 M.R.S.A. § 4566.4.

Because of the foregoing statutory prohibition, the Department of Personnel need not comply with the Commission's request for materials which relate to the Maine State Police Physical Aptitude Test.

ROBERT J. STOLT
Assistant Attorney General

RJS:mfe