

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

January 10, 1975

JEB
JEB
Nicholas L. Caraganis, Director

Personnel

Robert J. Stolt, Assistant

Attorney General

Selective Certification

JEB

SYLLABUS:

The selective certification procedure authorized by Personnel Rules 8.2 and 8.3a is not negated by 5 M.R.S.A. § 674, the veterans preference section of the civil service law. The Department of Personnel may certify eligibles from a selective certification register in accordance with the provisions of Rule 8 without violating the veterans preference provision of the civil service law. 5 M.R.S.A. § 674.

FACTS:

The Commissioner of Educational and Cultural Services has, pursuant to Personnel Rules 8.2 and 8.3a, requested selective certification of women eligibles for consideration as affirmative action officer of his department. The Department of Personnel, based upon written statements, submitted by the Commissioner of Educational and Cultural Services, has concluded that the selective certification requested would best serve the interest of the State.

QUESTIONS AND ANSWERS:

1. Whether the veterans preference section of the civil service law, 5 M.R.S.A. § 674, negates the right of the various departments of State Government to utilize the selective certification provisions of Department of Personnel Rule 8.3a? No.

2. May the Personnel Board authorize a selective certification of women for consideration as affirmative action officer of the Department of Educational and Cultural Services? Yes, provided such authorization is effectuated in accordance with the procedures established by Rule 8 of the Department of Personnel Rules.

REASONS:

The veterans preference section of the civil service law, 5 M.R.S.A. § 674, is only applicable to appointments made on an "open competitive basis."

Nicholas L. Caraganis
Page 2
January 10, 1975

"In making appointments to and retention in any position on an open competitive basis in the classified service, preference shall be given to veterans of the armed forces of the United States. . . ." Section 674.

It is within the authority of the Personnel Board to use Rule 8.3a selective certification procedures when in the Board's judgment the facts presented merit selective certification of eligibles as opposed to certification for appointment on an open competitive or other basis.

"Eligibles shall be certified in strict order of standing without regard to sex or special qualifications, except that where a limitation to one sex or a requirement of special qualifications is specified by the appointing authority in his written request and the director is satisfied that the facts and reasons specified warrant such action, certification may be limited to the sex specified, or to eligibles possessing the special qualifications." Rule 8.3a.

Here there is no conflict between Rule 8.3a and 5 M.R.S.A. § 674. In addition, there is no factual reason to presume that the selective certification procedure approved for use, in this instance, by the Personnel Board is not the appropriate procedure to serve the best interest of the State.

ROBERT J. STOLT
Assistant Attorney General

RJS/ec