

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

February 28, 1975

A. A. Poulin, Jr.
District Director
Immigration and Naturalization Service
United States Department of Justice
319 Federal Courthouse
Portland, Maine 04112

Dear Mr. Poulin:

Thank you for your letter of February 12, 1975, asking whether employers in the State of Maine may lawfully obtain information concerning citizenship or legal alien status from applicants for employment.

Although proposed guidelines of the Maine Human Rights Act seem to prohibit such inquiries, please note Section 4573.3 (5 M.R.S.A. § 4573.3) of the Act which provides that: "[i]t shall not be unlawful employment discrimination:


"to record any data required by law, or by the rules and regulations of any state or federal agency, provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this Act;"

and Section V, A, of the Commission's proposed regulations which interpret the Act as prohibiting such discrimination against naturalized citizens, resident aliens, and other lawfully immigrated individuals.

Further, the United States Supreme Court in a recent decision, Espinoza v. Farah Manufacturing Co., Inc., 414 U.S. 86 (1973) held that an employer may inquire as to United States citizenship, and refusal to hire a person because he is not a United States citizen does not constitute employment discrimination on the basis of "national origin in violation of § 703 of Title VII of the Civil Rights Act of 1964."

While the Maine Human Rights Act is not an exact duplication of Federal law, significant parallel exists to conclude that the terms "national origin" and "country of ancestral origin" as used in the Act do not embrace citizenship. Accordingly, an employer may request citizenship information without violation of the Maine Human Rights Act. Violation of the Human Rights Act and related proposed guidelines occurs when an employer uses the information to discriminate against individuals protected by the Act, but not when an employer inquires about citizenship or alienage in order to comply with Federal Immigration and Naturalization Law which prohibits employment of certain aliens.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

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