

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

STATE OF MAINE

Inter-Departmental Memorandum Date July 17, 1975

To Emilien A. Levesque, Commissioner Dept. Manpower Affairs

From Robert J. Stolt, Assistant Dept. Attorney General

Subject Constitutionality of 26 M.R.S.A. § 41. . . "The Director shall appoint a woman factory inspector."

SYLLABUS:

The provision of 26 M.R.S.A. § 41 which requires the Director of the Bureau of Labor and Industry to "appoint a woman factory inspector" is unconstitutional in violation of Article VI of the United States Constitution (the supremacy clause) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.

FACTS:

This request for opinion results from a present vacancy in the Department of Manpower Affairs. The Department is concerned that it not violate the Federal Civil Rights Act and the United States Constitution. Performance of the position requires no qualification indigenous to women only. It can be performed by either sex with equal dispatch.

QUESTION AND ANSWERS:

1. Whether the provision of 26 M.R.S.A. § 41 which requires the Director of the Bureau of Labor and Industry to "appoint a woman factory inspector" violates the United States Constitution?

Yes.

2. Whether the Director is required by law to appoint at least one female inspector?

See Answer.

REASONS:

Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000 et seq.) prohibits discrimination in employment on the basis of sex.

"It shall be an unlawful employment practice for an employer -

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 200e (2).

Emilien A. Levesque

Page 2

July 17, 1975

Employer under the Act includes State and local governments and agencies thereof. Subsection (b) P.L. 92-261, § 2(2); 86 Stat. 103 (1972).

Women should neither be favored nor disfavored because of sex under the Act, unless there is a rational basis (bona fide occupational qualification) for treating them differently than men. The rational basis or bona fide occupational qualification must be reasonably necessary to the normal performance of the job. See Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Cir., 1971); Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971); and Burns v. Rohr Corp., 346 F. Supp. 994 (D.C. Cal., 1972). Here no rational basis or bona fide occupational qualification exists.

Where no rational basis or bona fide occupational qualification demands that a factory inspector be a woman, 26 M.R.S.A. § 41 requiring employment of a woman factory inspector will be preempted by the Supremacy Clause of the United States Constitution and Title VII. See Burns v. Rohr Corps, *supra*, and Richards v. Griffith Rubber Mills, 300 F. Supp. 338 (D.C. Ore., 1969).

Accordingly, the provision in 26 M.R.S.A. § 41 which requires the Director of the Bureau of Labor and Industry to "appoint a woman factory inspector" is unconstitutional in violation of Article VI of the Constitution of the United States (the Supremacy Clause) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.


ROBERT J. STOLT
Assistant Attorney General

RJS/ec