

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 7, 1975

To H. Sawin Millett, Jr., Commissioner Dept. Educational & Cultural Services
From John W. Benoit, Jr., Deputy Dept. Attorney General

Subject P.L. 1975, c. 153: Responsibility of State Agency to Withhold State Financial Assistance

This is a reply to your inter-departmental memorandum dated September 29, 1975, asking whether the Department of Educational & Cultural Services will be required by P.L. 1975, c. 153, to determine whether a school administrative district or other school administrative unit was engaged in discriminatory practices contrary to the Act, and if so, to withhold State subsidy from the local school system.

The Act specifies that no State agency shall approve a grant of State financial assistance to any recipient engaged in discriminatory practices. See §787, which is added to Title 5 of the statutes and reads as follows:

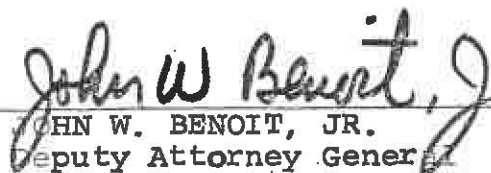
"No state agency or state related agency shall approve a grant of state financial assistance to any recipient who is engaged in discriminatory practices. All recipients of state financial assistance shall submit to the Maine Human Rights Commission, at its request, information relating to the recipient's operations with regard to race, color, religious creed, sex, national origin, ancestry or age. Such information shall be furnished on a form to be prescribed by the Maine Human Rights Commission."

The provisions of the Act become operational July 1, 1976. In order for one to conclude that the Department of Educational & Cultural Services will be required to withhold school subsidy from a local school system "engaged in discriminatory practices," it is necessary to interpret the word "recipient" as including local school systems. That term is not defined in the Act. Moreover, no educational financial assistance could legally be withheld by the Department of Educational & Cultural Services unless it has authority to approve "grants" to local school systems. Neither is the word "grants" defined in the Act.

While it is true that the Act is brought to bear upon political subdivisions and school districts of the state (§ 790), it is not at all clear the State's payment of school subsidies to local school systems is encompassed within the legislative provision, "shall approve a grant of state financial assistance." The "School Finance Act of 1975" contains provisions for funding public school education.

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In light of the fact there is a serious question whether § 787 reaches school subsidy payments the State is obligated to make to local school systems, and realizing the Act does not become operational until July 1, 1976 (so there is time to amend the statute), we respectively suggest legislation be introduced at the upcoming Special Legislative Session to clarify the matter.


JOHN W. BENOIT, JR.
Deputy Attorney General

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