

MAINE STATE LEGISLATURE

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*State Funds! Prohibition of expenditures for
Special groups.*

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February 28, 1977

Honorable Albert Theriault
House of Representatives
State House
Augusta, Maine

Dear Representative Theriault:

This is in response to your request to Mr. Brennan concerning problems which might be raised should a law be passed which provided:

"No money shall be raised for the State of Maine by taxation that is dedicated to nor will be expended for any person or persons or group of persons based purely on race, religion or sex."

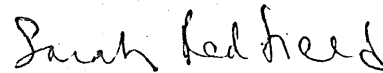
A brief review of the proposal indicates two possible areas of concern.

The first is the potential effectiveness of such a proposal. It is an established principle of statutory construction that where there are both a general law and a specific law on a subject and where these laws conflict, the specific provision will prevail. Thus, while a law such as the one proposed could be interpreted to prohibit the State from expending funds for the benefit of Indians, it would conflict with payments required by other relevant statutory provisions, see e.g., Title 22 M.R.S.A. § 4713 (relief of Indians not members of tribes), § 4772 (destitute members outside of reservation), § 4773 (payments due under treaty or law). Inasmuch as the latter provisions are more specific, they would prevail.

The second concern is the breadth of the language proposed. It would be arguable, for example, that no state funds could be used to provide medical services or welfare benefits to pregnant women since such payments would be based purely on the sex of the recipient. This is, of course, only one example. It is impossible to predict now what applications, other than those intended, might be made of this language.

I hope this brief analysis is satisfactory to provide you with an indication of the potential problems of legislation such as that proposed. If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



SARAH REDFIELD
Assistant Attorney General

SR/ec