JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
April 14, 1977

Honorable James McBreairty
House of Representatives
State House
Augusta, Maine

Dear Representative McBreairty:

You inquired whether it would be constitutional to prohibit the employees of the Department of Inland Fisheries and Wildlife from participating in a lottery to be operated by the Department to determine the recipients of a limited number of moose hunting licenses. Your question is whether this provision would violate the equal protection clauses of the United States and Maine Constitutions. The answer to this is that while it would be constitutionally permissable to exclude the operators of a lottery from participation therein, a proposal which would exclude an entire department of government from participating when only a small percentage of the department is actually operating the lottery might be unconstitutional.

In order to survive a challenge under the equal protection clauses, a statutory classification must be shown to have a rational basis. Dandridge v. Williams, 397 U.S. 471, 485 (1970). It would appear that in general the basis for the proposal in question here is rational; insuring the integrity of a lottery by prohibiting its operators from participating would seem to be a legitimate legislative objective. The more difficult question is whether it is rational to exclude an entire department of government responsible for a lottery's administration when only a small fraction of its employees will be actually involved.

A statutory classification may be invalidated for including more people within it than is necessary to accomplish the legislative purpose. Massey v. Apollonio, 387 F. Supp. 373, 376 (D. Me. 1974),

and cases cited therein. This would seem to be the case with the present proposal to exclude the entire Department of Inland Fisheries and Wildlife from the moose lottery. The Department employs hundreds of persons, many of whom rarely if ever come to the Department headquarters in Augusta, where the lottery would be operated. It is difficult to see how the objective of the integrity of the lottery would be furthered by excluding all of these employees from participating. Consequently, the bill in its present form is quite vulnerable to constitutional attack by one of these unnecessary excluded persons.

Please let me know if I can be of any further assistance.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB:we
cc: Hon. Cecil McNally, Maine Senate
Hon. Andrew Redmond, Maine Senate
Hon. Charles Dow, Maine House of Representatives
Maynard F. Marsh, Commissioner, Department of Inland Fisheries and Wildlife