

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date April 21, 1977

Emilien A. Levesque, Commissioner

Dept. Manpower Affairs

To

Dept.

Attorney General -

From Patricia McDonough, Asst. Atty. Gen.

Dept. Employment Security Commission

Subject

Confidentiality of Employment Security Records

FACTS:

From time to time, the Employment Security Commission is served by public officials with subpoenas to produce Employment Security records for use in court proceedings. The Employment Security Law (26 M.R.S.A. § 1082(7)) provides that records of the Commission are to be held confidential.

QUESTION:

Whether the Employment Security Commission must release Employment Security records to public officials in the performance of their public duties for use in court proceedings upon the issuance of a subpoena?

ANSWER:

Yes

REASON:

Title 26 M.R.S.A. §1082(7) governs the confidentiality of the records of the Employment Security Commission and provides, in part, that:

Information thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity,....

The major Maine case interpreting a confidentiality of records statute is Maine Sugar Industries & Vahlsing v. MIBA, 264 A.2d 1 (Me. 1970). In that case, Maine Sugar Industries contended that the confidentiality statute of the MIBA prevented the MIBA from revealing its records to a Legislative Committee even upon the issuance of a subpoena. They found that as the statute contained no express provision barring the use of the information, the statute must be construed as prohibiting only the voluntary disclosures of information. The court further stated that, although it recognized there may be some risk of injury in releasing the information, it felt that any risk was outweighed by the public interest served in keeping the Legislature informed.

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This same analysis has been adopted by several states in the interpretation of the confidentiality provisions of their respective Employment Security Laws. In Marceau v. Orange Realty, Inc. 92 A.2d 656 (N.H. 1952), the New Hampshire court reviewed the confidentiality statute of the Employment Security Commission (which is virtually identical to the Maine provision) and held that the records had to be produced upon the service of a subpoena. The court found that "the records are confidential in the sense that they are not to be voluntarily disclosed by the Commission, and the obligation to disclose information required in the administration of justice should not be limited without a clear legislative mandate." Other cases adopting this same view are Carr v. Monroe Manufacturing Co., 431 F.2d 384 (5th Cir. 1970); Powers v. Superior Court, 82 A.2d 885 (R.I. 1951); Bell v. Bankers Life Casualty Co. 64 N.E.2d 204 (Ill. 1945).

The Maine Employment Security Commission confidentiality statute is similar to the statutes discussed in the above situations, and it contains no express language barring the disclosure of information in a court proceeding.

Administrative Regulation No. 1 of the Maine Employment Security Commission (see attached copy) provides that no records shall be disclosed or produced pursuant to a subpoena except in certain specified situations. One of the situations in which the disclosure of records is authorized is to public employees in the performance of their public duties.

As the Maine statute provides no express language prohibiting the disclosure of information in a court proceeding and as the attached Administrative Regulation indicates that the information must be released pursuant to a subpoena to a public official, the Employment Security Commission must release Employment Security records to public officials in the performance of their public duties for use in court proceedings upon the issuance of a subpoena.

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ADMINISTRATIVE REGULATION NO. 1 - Disclosure of Official Records and Information.

- I. No member, officer or employee of the Employment Security Commission, except as authorized by this regulation or otherwise expressly authorized by the Commission, shall produce or disclose to any person or before any tribunal, hearing a civil case, directly or indirectly, whether in response to a subpoena or otherwise, any record (including any file, letter application, claim, return, report or other paper or document) or any information acquired therefrom or otherwise officially acquired, pertaining to any person.
- II. Any request or demand for any such record or information, disclosure of which is forbidden by this regulation, shall be declined upon the authority of this regulation. If any member, officer or employee of the Commission is sought to be required, by subpoena or other compulsory process to produce such record or give such information in a civil proceeding, he shall respectfully decline to present such record or divulge such information, basing his refusal upon this regulation.
- III. Disclosure of such records or information is hereby authorized in the following cases:
- A. To any properly identified claimant for benefits or payment under a State, Territorial, or Federal unemployment compensation or readjustment allowance law or to his duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.
 - B. To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, or employment counseling.
 - C. To public employees when the request for such disclosure is in connection with the performance of such employees' public duties and when such disclosure will not impede the operation of the employment security program and is authorized in writing in individual cases by the chairman, but such authorization shall not include permission for a general inspection of the files.
- IV. Nothing herein shall be construed to preclude the disclosure by the Commission or any member, officer, or employee thereof, of any such record or information in any formal proceeding under the Employment Security Law or other program administered by the agency; nor shall anything herein be construed to prohibit the publication of statistical data or other information not relating to any particular person; nor shall this regulation apply to personnel information relating to employees of this Commission.

* SEE FEDERAL REGULATIONS ON FOLLOWING PAGE.