

MAINE STATE LEGISLATURE

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Evolution of Access to Human Rights Conciliation Agreements

5 M.R.S.A. 4612.3

1 M.R.S.A. 402-3

STATE OF MAINE

Inter-Departmental Memorandum Date May 10, 1977

To Terry Ann Lunt-Aucoin, Director Dept. Maine Human Rights Commission
 From Sarah Redfield, Assistant Dept. Attorney General
 Subject Confidentiality of Final Conciliation Agreements

This is in response to your request for an opinion as to whether the Maine Human Rights Commission (hereinafter "the Commission") is required by the terms of Title 5 M.R.S.A. § 4612.3 to keep confidential its final conciliation agreements. Title 5 M.R.S.A. § 4612.3 prohibits disclosure, without the consent of the parties, of that which occurred during the course of conciliatory efforts, but does not prohibit disclosure or publication of the final terms of a conciliation agreement.

It is my understanding from the documents provided by you to this office that satisfactory conciliation involves the signing of a "conciliation agreement" which is, in essence, a contract among the Complainant, the Respondent, and the Commission. Such agreements are approved by a majority vote of the Commission at its public meetings.

This procedure is appropriate under the Maine Human Rights Act and state law regarding Public Records and Proceedings. Section 4612.3 provides:

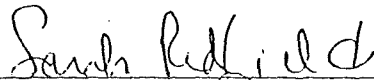
"INFORMAL METHODS, CONCILIATION. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. Nothing said or done as part of such endeavors may be made public without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding." (Emphasis supplied)

On its face, this section indicates by a plain meaning of its terms that it is the endeavors or attempts at conciliation

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which remain confidential.* Where such attempts are unsuccessful, matters discussed during negotiations remain confidential. Where, however, the efforts are successful, this prohibition need not apply. This procedure is analogous to that of the Maine Rules of Evidence, Rule 408, concerning compromise and offers to compromise.** The purpose of both provisions is to promote "free and open discussion in negotiations for settlement," Field & Murray, Maine Evidence, § 408.1 (1976). Once settlement has been reached, this purpose has been accomplished.

This interpretation is consistent with Title 5 M.R.S.A. § 4566.10 which authorizes the Commission to publish such results of its investigations and research "as in its judgment will tend to promote good will and minimize or eliminate discrimination." Similarly, this interpretation is consistent with state law regarding public records and proceedings. Final conciliation agreements adopted at public meetings are public records as defined by Title 1 M.R.S.A. § 402.3. As discussed above, they are not within the scope of exceptions as a privilege as to use as evidence, see 1 M.R.S.A. § 402.3.B; nor can they be viewed as having been designated confidential by statute, see 1 M.R.S.A. §§402.3:A and 401.



SARAH REDFIELD
Assistant Attorney General

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- * In interpreting a statute "words are to be interpreted in the sense in which they are commonly understood, according to the common meaning of the language. . . taking into consideration the context and the subject matter relative to which they are employed." Merchants Case, 106 A. 117, 118 Me. 96, 97 (1919).
- ** Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.