

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 23, 1977

Mr. William H. Sager
Chief Counsel
Office of Revenue Sharing
Office of the Secretary of the Treasury
2401 E. Street, N.W.
Columbia Plaza Highrise
Washington, D.C. 20226

Dear Mr. Sager:

I am writing to ask for written confirmation of the opinion which you gave me over the telephone concerning the use of revenue sharing funds by the Department of Educational and Cultural Services of the State of Maine. First, however, I want to thank you for your prompt and understanding assistance when I called.

As I told you, the State of Maine has allocated its \$14 million in revenue sharing funds to the Department of Educational and Cultural Services for "Teacher Retirement." (Private and Special Laws of 1977, c. 44) In previous years the allocation to the Department has been for General Purpose Aid for Local Schools (Private and Special Laws of 1975, c. 40, Private and Special Laws of 1973, c. 98). The question raised by the change of purpose and use of the allocation is as follows:

Does the use of federal revenue sharing funds for payment of the employers' share of teachers' retirement costs remove the State's obligation to comply with other aspects of the revenue sharing regulations (such as section 51.54 concerning the treatment of pregnant teachers) so long as the retirement system itself is non-discriminatory and consistent with regulations applicable thereto?

Again, I'd like to thank you for your assistance thus far and will look forward to your written confirmation of our discussion. If you should need any further information from me, please feel free to call me.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Redfield".

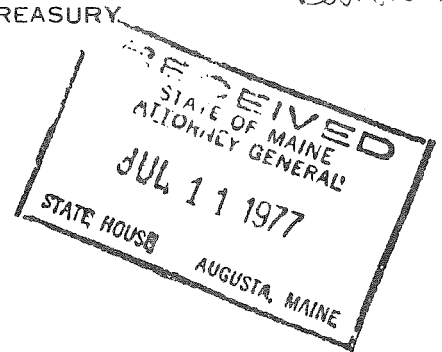
SARAH REDFIELD
Assistant Attorney General

SR/ec



OFFICE OF REVENUE SHARING
2401 E STREET, NW
COLUMBIA PLAZA HIGHRISE
WASHINGTON, D.C. 20226

July 7, 1977



Dear Ms. Redfield:

This is in response to your letter of June 23, 1977, in which you seek confirmation of an oral opinion I gave to you during our telephone discussion concerning compliance with revenue sharing regulations regarding treatment of temporary disabilities caused by pregnancy (§ 51.54 of the revenue sharing regulations). Your inquiry arises from the use of the State of Maine's revenue sharing funds by the State Department of Education and Cultural Services.

You mention in your letter that the State of Maine has recently altered its allocation of revenue sharing funds to the Department from general purpose aid for local schools to the funding of the employer's share of "teacher retirement" costs. You inquire whether this change removes the State of Maine's obligation to comply with other aspects of the revenue sharing regulations (i.e. § 51.54).

As you know, § 122 of the amended Revenue Sharing Act provides, in part, that no person on the basis of sex should be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government, which government receives revenue sharing funds. Section 51.54(d)(2) of the revenue sharing regulations issued pursuant to § 122 of the amended Revenue Sharing Act states:

A recipient government shall not have a written or unwritten policy which results in different treatment of temporary disabilities caused by pregnancy with respect to the commencement or duration of employment or leave.

If a recipient government violates this prohibition, it is subject to the statutory process spelled out under § 122 of the amended Revenue Sharing Act and also risks the suspension or termination of its revenue sharing funds until the violation is remedied.

The only exceptions to § 122 of the amended Revenue Sharing Act (provided in § 122(a)(2)) relate to construction projects (not applicable here) and funding. The funding exception under § 122(a)(2)(A) of the amended Act provides that § 122 would not apply to a recipient government if that government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with revenue sharing funds.

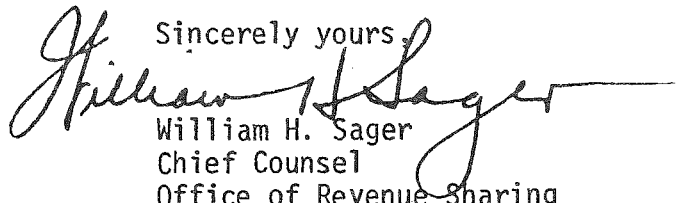
As I noted earlier, the State of Maine funds the Department with revenue sharing funds. The Department concerns itself with educational matters. Evidently, matters dealing with teachers would arise out of the programs or activities of the Department. Even though the concerned revenue sharing funds are designated for "teacher retirement" they benefit the other programs or activities of the Department.

The Office of Revenue Sharing and various courts have interpreted such benefits as constituting funding of those other programs or activities. The revenue sharing funding of "teacher retirement" benefits the other Department programs and activities by, among other things, attracting qualified teachers, and offsetting the expenses of programs that the Department would otherwise either have to curtail or fund with its own source funds. In other words, the State of Maine revenue sharing funding of one Department program affects the funding of all of the Department's programs or activities; therefore, the revenue sharing funds benefit or fund all of these programs. While not here citing the legal cases on this point, it is our judgment that the State would not be able to carry its burden of proof by "clear and convincing evidence" that only the Department's "retirement cost" program was funded with revenue sharing funds. It is our judgment that the § 122(a)(2)(A) exception of the amended Revenue Sharing Act would not apply to your situation.

Accordingly, the State's funding of the Department for "retirement cost" does not remove its obligation to comply with § 122 of the amended Revenue Sharing Act and § 51.54 of the revenue sharing regulations. If a program or activity of the Department violates § 51.54 of the revenue sharing regulations then the State of Maine (as a primary recipient of revenue sharing funds) would be in violation of § 122 of the Revenue Sharing Act, and as mentioned above, would risk suspension or termination of its revenue sharing funds.

I hope that the above information is helpful. If we can be of any further assistance, please let us know. I am enclosing a copy of the amended Revenue Sharing Act and a copy of the interim revenue sharing regulations for your reference.

Sincerely yours,



William H. Sager
Chief Counsel
Office of Revenue Sharing

Ms. Sarah Redfield
Asst. Attorney General
Department of the Attorney General
Augusta, Maine 04333

Enclosures