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April 24, 1979

Honorable James K. McMahon
District 111
House of Representatives
State House
Augusta, ME 04333

Dear Representative McMahon:

This responds to your request for an opinion on whether eligibility limitations contained within the Elderly Householders Tax and Rent Refund Act (36 M.R.S.A. Chapter 901) are violative of the Maine or United States Constitutions.

Section 6111, as repealed and replaced by P.L. 1977, c. 771, prohibits claims which are otherwise allowable from being paid unless at least one member of the household has attained the age of 62 or the claimant,

> "(b)e a widow or widower who has not remarried, who has attained the age of 55 during the year for which relief is requested, and who, due to a disability, is receiving federal disability payments, such as supplemental security income."

The Act thus discriminates on the basis of prior marital status among persons who are age 55 and receiving disability payments. We interpret your request as asking whether this discrimination by the Legislature offends the equal protection provisions of the Maine or United States Constitutions.

Courts use two standards of review in determining whether legislation comports with constitutional guarantees of equal protection of the law. When the legislature employs "suspect" classifications, e.g. race, national origin or alienage, the courts subject the classification to "strict scrutiny" to determine whether it is necessary to promote a compelling or overriding governmental interest. The usual standard, typically used when the legislature classifies persons in terms of general economic legislation, is "whether it is conceivable that the classification bears a rational relationship to an end of government not prohibited

by the Constitution." Nowak, Rotunda & Young, Constitutional Law, West Publishing Co., 1978, p. 524. 1/

The legislation under discussion is in the economic arena and does not involve "suspect" classifications. The standard of review is simply whether the classification bears some rational relationship to a legitimate governmental end.

The Law Court, relying on United States Supreme Court decisions, has held that the equal protection clause of the Maine Constitution (Art. I, §6-A) is offended only if the classification under attack rests on grounds wholly irrelevant to the achievement of the statute's objectives. State v. S. S. Kresge, Inc., 364 A.2d 868 (Me. 1976). In considering an equal protection challenge to a statute regulating social and economic problems, the Law Court made clear that the test to resolve that challenge is the same under either Constitution. Shapiro Bros. Shoe Co., Inc. v. Lewiston-Auburn S.P.A., 320 A.2d 247, 255 (Me. 1974). See also, State v. S. S. Kresge, Inc., supra.

In Shapiro Bros. Shoe, the Court held that "(m)erely because the Legislature must choose a certain point at which statutory coverage will begin does not render a statute unconstitutional . . . We do not believe that equal protection of the laws turns on such a meaningless and artificial distinction." 320 A.2d 256, 257.

In Dandridge v. Williams, 392 U.S. 471 (1970), the United States Supreme Court considered a challenge to a Maryland regulation which imposed a maximum limit on the total amount of financial aid under the Aid to Families with Dependent Children program any one family could receive. The Court recognized it was dealing in the social and economic field not with matters connected with freedoms guaranteed by the Bill of Rights.

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause (of the Fourteenth Amendment) merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.'" (Citations omitted). 392 U.S. at 485.

1/ Gender based classifications are subjected to more than the "rational relationship" test but something less than "strict scrutiny".

The Dandridge case held that "the Constitution does not empower the Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." 392 U.S. at 487.

In Kahn v. Shevin, 416 U.S. 351 (1974), the Supreme Court reviewed an equal protection challenge to a Florida statute which gave a $500 property tax exemption to widows but not to widowers. The Court upheld the Florida exemption finding that women face financial difficulties far in excess of those faced by men and that this disparity is likely exacerbated for widows. The Court held that "(a) state tax law is not arbitrary although it 'discriminate(s) in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction or difference in state policy,' not in conflict with the Federal Constitution. Allied Stores v. Bowers, 358 U.S. 522, 528, 3 L. Ed. 2d 480, 79 S. Ct. 437. This principle has weathered nearly a century of Supreme Court adjudication." 416 U.S. at 355. See also, Weinberger v. Wisenfield, 420 U.S. 636 (1975); Califano v. Goldfarb, 430 U.S. 199 (1977).

Having determined the constitutional standard against which this act should be measured, we must turn to the legislative history to determine the intent of the Legislature in enacting this provision. Prior to the enactment of chapter 771, the Act provided no relief to persons under the age of 62. L.D. 1531, the bill which was enacted as c. 771, contained the language of 36 M.R.S.A. §6111, as set forth above. On June 13, 1977, Representative Carey, speaking in support of tabling further action on L.D. 1531, stated that "Mrs. Kany is working on an amendment which would not discriminate. The Taxation Committee left out (sic) because no one even brought it to their attention (sic) the fact that there are some people who are 55 and disabled and single." Legislative Record, p. 1595.

Representative Kany later offered House Amendment "A" (H-899) to L.D. 1531, which was adopted by the House and carried the following Statement of Purpose: "The purpose of this amendment is to include all disabled persons age 55 and over under the provisions of the bill . . . including all disabled persons, not just widows and widowers over the age of 55." Examination of H-899 confirms that it contained language which, had it been enacted, would have removed the above-referenced discriminatory language.

The Senate refused to concur with the House Amendment which carried an appropriation of $900,000.00 for the biennium. The Legislature eventually did pass L.D. 1531 as amended by the Taxation Committee (S-186), effective the second year of the biennium and containing the language under discussion. It included an appropriation of $81,500.00. From this history

it is clear the Legislature considered the merit and cost of extending this economic assistance to all persons over the age of 55 who receive disability assistance. It rejected such an extension, choosing instead to limit this benefit to those who had suffered the loss of a spouse. The underlying assumption is that the deceased spouse contributed significantly to the financial security of the disabled person. This is not an unreasonable assumption. The classification thus bears a rational relationship to the legitimate governmental end of providing assistance to the needy. As this discussion indicates, that the line was drawn imperfectly and extends assistance to those who had many years ago adjusted to spousal loss while failing to provide assistance to the single or divorced disabled person does not render it unconstitutional.

I trust this response is helpful to you. If I may be of further assistance, please let me know.

Sincerely yours,

RICHARD S. COHEN
Attorney General

RSC/glm