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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

October 5, 1979

Mr. Kenneth Sargeant
Investigator
Maine Human Rights Commission
State House
Station 51
Augusta, ME 04333

Re: SMAHP v. Biddeford District Court

Dear Mr. Sargeant:

In connection with your investigation into a complaint made to the Maine Human Rights Commission that the building in which the Biddeford District Court is located does not contain facilities to permit access to it by the physically handicapped, you have asked for our opinion whether the Court is a "place of public accommodation" or a "place of employment" as those terms are used within 5 M.R.S.A. §4593. The terms are important since after September 1, 1974, a building renovated specifically as a "place of public accommodation" at a cost of more than $250,000, is required by 5 M.R.S.A. §4593 to meet minimum standards of construction designed to permit equal access to the physically handicapped. Similarly, if the building is renovated after that date specifically as a "place of employment" at a cost in excess of $100,000, the above-referenced construction standards apply. The building in which the Biddeford District Court is located was renovated in 1975, by its owner, the City of Biddeford, specifically to house the District Court at a total cost of $166,000. The construction standards regarding accessibility to the handicapped of §4593 were not met. It follows that if the Biddeford District Court is a "place of employment", the remodeling was accomplished in violation of §4593. Conversely, if the Court is a "place of public accommodation" there was no violation.

Determination of whether a given establishment is a place of public accommodation or of employment is not readily resolved by reference to the statute. The term "place of public accommodation" is statutorily defined in 5 M.R.S.A. §4593 to include an establishment that offers "goods, facilities or services to or solicits or accepts patronage from the general public." In contrast, "place of employment" is not defined. Conceptually, there is considerable overlap between the two terms. For example, every place of public accommodation is of necessity a place of employment by virtue of the employment therein of persons to provide services or goods to patrons. Indeed, with the exception of establishments entirely owner operated, it is nearly impossible to conceive of a place of public accommodation that does not employ at least one individual. Likewise, some places of employment may be places of public accommodation, as, for example, factory sales outlets in the same buildings as manufacturing facilities. Unlike the former example, however, not all places of employment are simultaneously places of public accommodation.

This overlap in terminology gives rise to the pivotal question whether the Legislature intended the terms "place of public accommodation" and "place of employment" to be treated as mutually exclusive. In confronting this question, it is important to recognize that if the terms are not read as mutually exclusive, then the spending trigger for places of public accommodation ($250,000) would effectively be rendered a nullity. Since virtually all places which accommodate the public also employ at least one person, the effect of the statute would be to make the $100,000 spending trigger applicable in every case.

The peculiar result which ensues from not reading the terms as mutually exclusive leads us to conclude, especially in the complete absence of any legislative history on the issue, that as a matter of logic the Legislature is unlikely to have intended such an application of the statute. It is moreover a cardinal rule of statutory construction that statutes should be read to avoid absurd results [Ballard v. Edgar, 268 A.2d 884 (Me. 1970)] and to give effect to all provisions of the statute, [Finks v. Maine State Highway Commission, 328 A.2d 791 (Me. 1974)]. In the absence of any clear legislative direction to provide guidance on this issue, and the apparent lack of useful case law analogy from other jurisdictions, we think it necessary to construct a

reasonable interpretive approach to avoid the above-noted result. Thus, we conclude that the terms are to be treated as mutually exclusive. 1/

Given the above conclusion, it becomes necessary to determine whether the courthouse is to be treated as a place of public accommodation or a place of employment. As a factual matter, it is apparent that the court is both a place of public accommodation insofar as it provides a service to the citizenry and a place of employment for those persons employed therein to provide the service. We think that the only reasonable and logical answer to the question, in light of the lack of definitional clarity and the dual function of the courthouse, is to look to the dominant purpose for which the structure is used. Although the answer is not entirely clear, we are of the opinion that the more dominant purpose of the courthouse is as a place of public accommodation rather than of employment.

In reaching this conclusion, we are influenced by our belief that it is more consistent with the Human Rights Act as a whole to read places of public accommodation as broadly as is reasonably possible. Ironically, a broad construction of the term "place of employment" and the concommitant narrowing of the meaning of a "place of public accommodation" for the purposes of §4593 results in a severe constriction of the prohibition against discrimination in the operation of a "place of public accommodation," set forth in §4592. That section declares it unlawful for any person to "withhold from or deny to any person, on account of race, color, sex, physical or mental handicap, religion, ancestry or national origin, any of the accommodations, advantages, facilities or privileges" of a "place of public accommodation." The Legislature

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1/ The silence of the legislative record makes it impossible to determine precisely why the Legislature established a lower spending limit for places of employment. It may be conjectured, however, that the Legislature believed that, as a general matter, renovations to a place of public accommodation would be more expensive. That belief would justify a higher minimum spending limit before imposing the additional financial burden of guaranteeing that the place permit equal access to the physically handicapped. If this conjecture as to the legislative purpose is correct, an interpretation of the statute which would render the lower limit applicable whenever at least one person is employed in the place would defeat the Legislature's objective.

broadly defined "place(s) of public accommodation" and its application should not be unnecessarily narrowed.

Unfortunately, the Legislature has constructed a statutory scheme which employs the term "place of public accommodation" in a peculiar fashion. When read broadly, it expands rights under the Human Rights Act but constricts them under the handicapped accessibility laws. Conversely, a narrow reading of the term constricts rights under the Human Rights Act and expands them for the physically handicapped. We think that this peculiar result is one that is appropriate for legislative correction in the future.

Nevertheless, for the reasons discussed, it is our opinion that the District Court is a "place of public accommodation" and not a "place of employment" as those terms appear in 5 M.R.S.A. §4593. It follows that since the 1975 renovation did not exceed $250,000, there was no violation of the provisions of 5 M.R.S.A. §4593.

Sincerely yours,

RSCohen

RICHARD S. COHEN
Attorney General