

MAINE STATE LEGISLATURE

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June 6, 1980

Honorable John D. Chapman
Senate Chairman
Committee on Business Regulation
Day's Ferry
Woolwich, ME 04579

Dear Senator Chapman:

You have requested the opinion of this office as to whether 32 M.R.S.A. § 7166 prohibits an employer from suggesting that an employee submit to a polygraph examination when the results would have no adverse effect on the job status of the employee. Since there is no explicit prohibition in the statute against an employer's suggesting such an examination, we answer in the negative, with the important qualification discussed below.

The relevant portion of § 7166 reads as follows:

2. Current employees. No employer may, directly or indirectly, require, request or suggest that any employee submit to a polygraph examination as a condition of employment, or administer or cause to be administered to any employee such examination or use or refer to the results of such an examination for employment purposes.

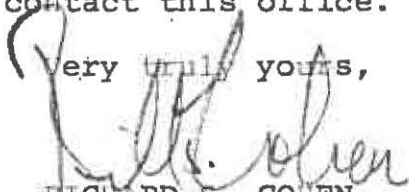
The language of subsection 2 establishes absolute prohibitions against an employer's raising the question of a polygraph examination as a condition of employment, and penalizing an

employee for refusing to take a polygraph examination. There is no prohibition relating to polygraph examinations suggested by an employer to which no employment conditions are attached.

We should point out that while we have concluded that there are limited circumstances under which an employer may suggest a polygraph examination, the practical effect of the Act may be to deter such conduct altogether. For example, should an employer suggest a polygraph examination to an employee and should the employee refuse, a subsequent dismissal of the employee might well give rise to an inference that the suggestion was intended as a condition of employment. Thus, the dismissal of an employee to whom such a suggestion was made, even if not motivated by the employee's unwillingness to take the test, raises the possibility that a jury or judge might link the firing to the refusal. Similarly, referring to the results of a polygraph examination, even one requested by the employee, creates a risk that a subsequent decision negative to the person's employment status could be viewed as stemming from the results of the examination. Prudent employers might well conclude that the only way to avoid problems under the Act is to refrain from any use of the polygraph examinations.

I hope this opinion responds to your question. If we may be of further assistance, please contact this office.

Very truly yours,


RICHARD S. COHEN
Attorney General

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