

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

May 30, 1995

Representative Patricia Lemaire
Representative Roland B. Samson
Maine House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Lemaire and Representative Samson:

I am writing in response to your inquiry of May 25, 1995, concerning whether Legislative Document No. 507, "An Act to Exclude Certain Parks from the Definition of Mobile Home Parks," as amended by Committee Amendment A, is impermissibly discriminatory in violation of the Equal Protection Clauses of the United States and Maine Constitutions. For the reasons which follow, it is the opinion of this Department that the bill, if enacted in its amended form, would be unconstitutional.

The bill, in its amended form, would result in mobile home parks that house migratory laborers on a seasonal basis being exempt from regulation under the Maine Revised Statutes, Title 10, chapters 951 and 953. Those portions of Title 10:

- (1) require parks to be licensed, 10 M.R.S.A. § 9082 (Supp. 1994);
 - (2) insure that housing conditions in mobile home parks do not present a danger to the health and safety of the public, 10 M.R.S.A. § 9084 (Supp. 1994);
 - (3) authorize the Manufactured Housing Board to conduct inspections to monitor compliance, 10 M.R.S.A. § 9086 (Supp. 1994);
 - (4) provide penalties for violations of the law, 10 M.R.S.A. § 9087 (Supp. 1994);
- and
- (5) establish an implied warranty and covenant that homes and associated

facilities in trailer parks be fit for human habitation. 10 M.R.S.A. § 9099(1) (Supp. 1994).

Thus, under the amended bill, migratory laborers living in seasonal mobile home parks would not receive the protections of these statutory provisions, and any rules promulgated thereunder, which were enacted to insure public health and safety. Your question is whether such treatment would violate the laborers' rights to the equal protection of the laws.

The Equal Protection Clauses of the United States and Maine Constitutions, which the Supreme Judicial Court of Maine have found to be co-extensive, Choroszy v. Tso, 647 A.2d 803, 808 (Me. 1994), are invoked when legislation treats similarly situated persons differently. Mahaney v. State, 610 A.2d 738, 743 (Me. 1992). Here, not all persons who reside in trailer parks that are operated on a seasonal basis will be treated equally. If Legislative Document No. 507, as amended, were enacted, a specific group of persons who reside in seasonal mobile home facilities, persons comprising "migratory labor," would be the sole category of persons who do not receive the basic health and safety protections that are provided to all other persons who reside in similar locations that are included in the definition of "mobile home parks". 10 M.R.S.A. § 9081(2) and § 9091(2) (Supp. 1994).

Once it is established that a person is treated differently than similarly situated persons, a court must then evaluate the purpose of the differential treatment. "A difference in treatment is constitutional 'if facts may be reasonably conceived to justify the distinction.'" Dishon v. Maine State Retirement System, 569 A.2d 1216, 1217 (Me. 1990), quoting McNicholas v. York Beach Village Corp., 394 A.2d 264, 269 (Me. 1978). Conversely, a difference in treatment is unconstitutional if the state's classification is not rationally related to legitimate governmental objectives. Lambert v. Wentworth, 423 A.2d 527, 531 (Me. 1980). It is against this constitutional standard that Legislative Document No. 507, as amended by Committee Amendment A, must be measured.¹

¹ If a suspect classification like race, or a fundamental interest such as the right to vote, is involved, an equal protection challenge to a difference in treatment requires a higher standard of review: the government must show that the discrimination is narrowly tailored to serve a compelling state interest. State v. Rush, 324 A.2d 748, 757 n.7 (Me. 1974). Although it might be demonstrated that a majority of persons who comprise "migratory labor" in Maine are African-American, Hispanic, or Native American, and thus the argument could be made that statutes that discriminate against this class warrant heightened scrutiny, that possibility does not need to be addressed here because this legislative proposal does not even survive analysis under the lowest level of constitutional scrutiny. It should also be noted, however, that the Law Court recently concluded that

This Department is unable to discern any legitimate governmental objective which could sustain a legislative determination to deny basic health and safety protections to migrant laborers who live a portion of the year in seasonal trailer parks, while preserving those same protections to all other persons who live in similar parks. There is nothing in the nature of migratory workers that can rationally distinguish their status from that of other persons, such as tourists, who might temporarily reside in such facilities. This Department is also unable to discern, nor does the bill, as amended, articulate any conceivable set of facts to justify this discriminatory treatment and to support the enactment of this statute. See Aseptic Packaging Council v. State, 637 A.2d 457, 460 (Me. 1994). Thus, it is the Opinion of this Department that Legislative Document No. 507, as amended, is not rationally related to any legitimate governmental objective and therefore, if enacted, would violate the Equal Protection Clauses of the United States and Maine Constitutions.

I hope this information is helpful to you, and please do not hesitate to contact this office if we can be of further assistance to you.

Sincerely,



ANDREW KETTERER
Attorney General

AK:sw

cc: Representative Richard Kneeland
Sponsor, Legislative Document 507
Senator Norman K. Ferguson, Jr.
Representative Guy R. Nadeau
Co-Chairs, Joint Standing Committee on
Legal and Veterans' Affairs

farmworkers who reside in housing provided by their employer are "tenants" under Maine law and as such, are entitled to the same legal protections that other "tenants" receive. See State v. DeCoster, 653 A.2d 891, 893-904 (Me. 1995).