

STATE OF MAINE

Inter-Departmental Memorandum Date March 23, 1981

To Patricia E. Ryan, Executive Director

Dept. Maine Human Rights Commission

From John Carnes, Legal Advisor

Dept. " "

Subject Status of Elected Officials as "Employees" under the Maine Human Rights Act.

Question: Is an elected official an "employee" as defined in the Maine Human Rights Act?

Opinion: No.

Reasoning:

1. 5 M.R.S.A. §4553(3), Employee, states only that: " 'Employee' does not include any individual employed by his parents, spouse or child."
2. The Maine Law Court has ruled that the employment discrimination provisions in the Maine Human Rights Act were intended by the Legislature to be "the state counterparts of the Federal Act, [Title VII of the Civil Rights Act of 1964, as amended] complimenting and in certain instances supplementing the federal," *Maine Human Rights Commission v. Local 1361, 17 FEP Cases 347, 351 (1978)*.
3. Title VII, Section 701(f) states:
"The term 'employee' means an individual employed by an employer, except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision."
4. The federal exclusion of elected officials from the term "employee" was first stated in the 1972 Amendments to Title VII. The definition of "employee" in the Maine Human Rights Act became effective July 1, 1972.
5. The question is: did the Maine Legislature intend to include elected officials as employees under the Maine Act since the Legislature has never excluded such persons? The Maine Legislature has not addressed the issue of who is an employee except to exclude from the definition a person employed by a parent, spouse or child. On the other hand, Congress has made it clear that it was never intended that elected officials be considered "employees" entitled to protection under the Civil Rights Act of 1964.

Because of statements made by the Court in the Local 1361 case outlining the relationship between Title VII and the Maine Human Rights Act, I believe that the Law Court would probably hold that the Maine Legislature intended to take the same position articulated by Congress in the Federal Act.