

STATE OF MAINE

Inter-Departmental Memorandum Date August 20, 1979

To Patricia E. Ryan

Dept. _____

cc: John Carnes

Dept. _____

Subject [REDACTED]

According to the long established doctrine of sovereign immunity, the sovereign (in this instance the U.S. Government through its instrumentality the GSA) is not liable to be sued in any judicial tribunal without the sovereign's consent. Since the power base of our administrative procedure is the ability of the Complainant to file suit in state Superior Court, if this judicial forum is denied us by the doctrine of sovereign immunity, then it is meaningless to say that we have jurisdiction over federal agencies. We could not even have a subpoena issued against a federal agency because the court would not have the power to hold the agency in contempt if it failed to honor the subpoena.

In the case of discrimination law, the sovereign has consented to suit against its agencies but only in so far as it has provided for such in the 1972 amendments to the Civil Rights Act of 1964.

In Brown v GSA, 12 FEP Cases 1361 (1976), the U.S. Supreme Court ruled that the 1972 amendments to the Civil Rights Act (those which brought federal employees under Title VII), indicated that Congress intended to create "an exclusive preemptive administrative and judicial scheme for the redress of federal employment discrimination" and stated that Title VII is the exclusive judicial remedy for discrimination suits filed by federal employees and applicants.

When we receive complaints against federal agencies or the military, we should direct the individual to file with the EEO office of that agency. The investigation, determination and any internal appellate procedure are (since January 1, 1979) subject to review by the EEOC at the request of the complainant. Following this administrative process, if the complainant is not satisfied, he or she may then file suit in federal court under Title VII.

Although we may be hesitant to dismiss these cases for lack of jurisdiction, the rights of federal employees and applicants will be protected ultimately because, if complainant does file suit in federal court, the court will not be bound by any findings by the various EEO offices or the EEOC, but will grant a full trial de novo.