

STATE OF MAINE

Inter-Departmental Memorandum Date September 11, 1980To Patricia E. RyanDept. MHRCFrom John Carnes J.C.Dept. MHRCSubject Question concerning local Human Rights Commissions

I recently read a case entitled, Seattle Newspaper - Web Pressmen's Union Local No. 26 v. City of Seattle, Wash. Opp., 604 P.2d 170 (1979).

In that case the Union challenged the constitutionality of the Seattle fair employment practices ordinance.

The Washington Court of Appeals held that: 1) the state's discrimination statute was not intended by the legislature to be exclusive and did not preempt the city ordinance; 2) there was no conflict between the state statute and the city ordinance; and 3) the city ordinance was a valid exercise of its police power (i.e., its right to protect the health and welfare of its residents).

The court quotes from State ex rel. Shillberg v. Everett District Justice Court, 594 P. 2d 448, 450 (1979):

"A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated."

I don't believe that the Maine Human Rights Act expresses such an intent.

As to possible conflict between the statute and the ordinance, the court points out that "no real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or visa versa. There can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other."

The Court also states that "an ordinance may be more restrictive than the state enactment so long as the statute does not forbid the more restrictive enactment."

In other words, the Court felt in this case that the ordinance merely provided a further prohibition against unfair labor practices.

Some additional thoughts: 1) numerous employers and unions have established grievance procedures whereby a person who believes he or she has been discriminated against can seek appropriate relief. If the person is satisfied with the results of such a process, they ordinarily would not pursue a complaint with the Maine Human Rights Commission. However, they certainly have the right to file with us and the "grievance board" at the same time. One does not exclude the other; 2) if the local process results in "full relief," I would think it could be persuasively argued that the Complainant no longer had standing to file with the Maine Human Rights Commission because there would no longer exist a harm which needed to be remedied; 3) if the local process results in a settlement agreement which calls for less than full relief, I would think the Complainant could file another complaint with the Maine Human Rights Commission unless Complainant had waived the right to do so as part of the local settlement agreement; 4) also, if the protections provided by the local ordinance were narrower or more limited than those under the Maine Human Rights Act, the Complainant could always file an additional complaint with the Maine Human Rights Commission directed at those areas of discrimination not covered by the local law or seeking relief not available under the ordinance.

There is certainly no question in my mind that a decision rendered by a municipal commission ruling that the City's ordinance had or had not been violated would have no legal effect whatsoever on the question of whether the Maine Human Rights Act had been violated. Only the Maine Human Rights Commission has been empowered by the state legislature to determine whether "reasonable grounds" exist to believe that the Maine Human Rights Act has been violated.

These thoughts are not the result of exhaustive legal research. Please let me know if you wish me to set aside a block of time to prepare a more definitive memorandum. You might also consider presenting the question to the Attorney General's Office before sending an official response to Mr. [REDACTED] or suggest that Mr. [REDACTED] contact the Attorney General's office for guidance in establishing such a commission.

The Maine Human Rights Commission would not be bound in any way by a decision of the city commission. And a decision by it could not preclude a complainant from filing with the Maine Human Rights Commission unless the complainant had waived that right as part of a settlement agreement.

STATE OF MAINE

Inter-Departmental Memorandum Date September 8, 1980

To John Carnes

Dept. _____

From Patricia E. Ryan

Dept. _____

Subject Local Human Rights Commissions

[REDACTED], the town manager from [REDACTED] called me Friday, September 5, 1980 to discuss upcoming contract negotiations relative to discrimination in grievance procedures. He posed a question which I felt uncomfortable in answering definitively and told him I would refer it to you for some comment. The question is: can the town of [REDACTED] set up a human rights agency which would hear appeals or complaints from employees of the town who felt they had been discriminated against, and further, could the decision of that Commission be binding and preclude the rights of the complainant to file with the state's Maine Human Rights Commission after a decision had been reached?

I told him it sounded to me as if that would not be possible, however, I would pose the question to you for your input.