STATE OF MAINE

Inter-Departmental Memorandum Date July 29, 1980

To Paul Pierce, Chief Investigator Dept. Maine Human Rights Commission

From John Carnes, Legal Adviser Dept. " "

Subject Coverage of the Maine Human Rights Act With Regard to the Distinction Between Status as "Employee" and as Independent Contractor

Federal courts have ruled that Congress did not intend Title VII to cover the employer-independent contractor relationship. Presumably the Maine courts would find the same lack of intent in the legislative history of the Maine Human Rights Act.

Determining whether a person is an "employee" or an independent contractor for Title VII purposes involves an analysis of the "economic realities" of the work relationship between the parties. Such analysis will be based upon application of the general principals of the law of agency to undisputed facts. Generally, it is the extent of the employer's right to control the "means and manner" of the worker's performance which is the most important factor to review.

Spirides v. Reinhardt, D.C. Cir., 20 FEP Cases 141 (1979).

In making a determination based on the "economic realities" test, the following should be considered:

1) whether the complainant received compensation in the form of salary or wages as opposed to profits derived from a contractual fee;

2) the opportunities complainant has to increase profit by management of resources;

3) the degree of control which the respondent has over the manner and method by which the work is performed;

4) the extent to which the complainant personally performs the tasks. Mathis v. Standard Brands Chem. Industries, N.D. Ga., 10 FEP Cases 295 (1975).

As to the issue of "control" by the employer, the following factors should be considered according to agency law theory:

1) the extent of the control which, by agreement, the employer can exercise over the details of the work;

2) whether or not the worker is engaged in a distinct business or occupation;

3) the kind of occupation, i.e., whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

4) the skill required in the particular occupation;

5) whether the employer or the worker supplies the equipment and the place of work for the person doing the work;

6) the length of time for which the person is hired;

7) the method of payment, whether by time or by the job;

8) whether the work is a part of the regular business of the employer; and

9) whether the parties believe they are creating an employer-employee or employer-independent contractor relationship.
See: Restatement (Second) of Agency §220.

In Smith v. Dutra Trucking Company, N.D. Calif., 13 FEP Cases 978 (1976), the federal district court applied these considerations and found that a woman engaged in the trucking business was not an "employee" of the carrier with which she had a subhauling agreement. The court reached this conclusion after finding that:

1) she (and her husband) owned her own equipment;

2) paid her own costs;

3) obtained her own insurance from an insurer of her choice;

4) bought her own gasoline, oil and garage services from suppliers of her choice;

5) paid a rental fee to the carrier for use of its trailer; and

6) made her profit on the difference between her operating costs and the hourly rate the employer paid her.

The court found her to be an independent contractor even though:

1) she was paid an hourly rate;

2) the employer directed her to the job site; and

3) the employer requested that she arrive and depart at specified times.