

MAINE=
HUMAN
RIGHTS
COMMISSION

51 State House Station
Augusta, Maine 04333-0051

Executive Director
PATRICIA E. RYAN

Commission Counsel
JOHN E. CARNES

Date: April 26, 1996
To: Patricia Ryan, Exec. Director
From: John Carnes, ^{J.E.C.} Commission Counsel
Subject: MHRA Coverage of Licensing as
Aspect of Public Accommodations
Law

Question: Are licensing agencies of the State "places of public accommodation" under the Act with regard to the issuance or denial of licenses?

Answer: Yes.

Analysis: In 1988, the Law Court ruled in Jackson v. State of Maine, that the licensing function of government was not an activity of a place of public accommodation regulated by the Maine Human Rights Act. The Court reached this conclusion based on the fact that (a) the Act's definition of "public accommodation" expressed an "obvious emphasis" on physical places rather than activities, and (b) the Legislature had clearly regulated governmental activities through the Code of Fair Practices and Affirmative Action, 5 M.R.S.A. 781-791.

In 1995, Section 4592 of the Act was amended to add a prohibition against discriminating while providing the "goods and services" of a public accommodation, including a "public entity" (i.e., state or local government).

If the legislative intent behind this amended language is not as clear as it might be, any doubt was removed by the enactment of Section 4555:

"This Act does not apply to the issuance, denial, suspension, revocation or restriction of drivers' licenses by the Secretary of State until April 1, 1996."

Accordingly, it is clear that government licensing of drivers of motor vehicles is covered by the Act as of 1996. The clear implication of this language is that other forms of governmental licensing were intended to be covered upon the effective date of the amended statute.

*and see Cargallo v. Automotive Wholesalers,
the 1st Cir. decision
holding that Title III of
the ADA covers provision
of "services" as P.A.'s, not
physical establishments.*