

October 13, 1995

Jim Monroe, Acting Administrator
Commission for the Blind
and Visually Impaired
STATEHOUSE MAIL

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Hiring Preference for Blind Administrator of the Commission

Dear Mr. Monroe:

In your memorandum of September 11, 1995, you requested an opinion of the Attorney General regarding the constitutionality of Idaho Code § 67-5409. This section states that “preference shall be given to equally qualified blind persons in filling the position of administrator of the Commission.” Your question as stated in the memorandum was “whether this statement reflects reverse discrimination, and if the code requires modification.”

We conclude that the preference set forth in Idaho Code § 67-5409 is constitutionally permissible, does not constitute “reverse discrimination,” and does not require modification.

I.

ANALYSIS

“States have wide discretion in framing employee qualifications” Personnel Administrator of Massachusetts v. Fenney, 442 U.S. 256, 273, 99 S. Ct. 2282, 2293, 60 L. Ed. 2d. 870 (1979). However, any state law that overtly or covertly prefers one class of persons over another in public employment requires a particular level of justification to withstand a constitutional challenge under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Id.*

A. Level of Scrutiny

The first issue is the level of scrutiny required to withstand the constitutional challenge.

In Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d (1988), the United States Supreme Court summarized the standards applied to state laws challenged under the Fourteenth Amendment as follows:

In considering whether state legislation violates the Equal Protection Clause of the Fourteenth Amendment, we apply different levels of scrutiny to different types of classifications. At a minimum, a statutory classification must be rationally related to a legitimate governmental purpose. Classifications based on race or national origin, and classifications affecting fundamental rights are given the most exacting scrutiny. Between these extremes of rational basis review and strict scrutiny lies a level of intermediate scrutiny, which generally has been applied to discriminatory classifications based on sex or illegitimacy.

486 U.S. at 460, 108 S. Ct. at 1914 (citations omitted).

Since discrimination based on blindness does not fall within a suspect classification (such as race or national origin) and does not impinge on a fundamental right (such as the right to vote, freedom of speech or religion, or the rights to life, liberty or property) the level of justification applied is not “strict scrutiny.” Further, since the discrimination is gender neutral, “intermediate scrutiny” does not apply. Thus, the constitutionality of the discrimination is determined by rational basis review.

B. Rational Basis Review

In order to pass constitutional scrutiny, the statute in question must be rationally related to a legitimate government purpose. Hodel v. Indiana, 452 U.S. 314, 101 S. Ct. 2376, 69 L. Ed. 2d 40 (1981). While the Hodel case dealt with the issue of mining regulation, the statement of the United States Supreme Court regarding the review of social and economic legislation applies to the current situation. The Court stated that:

Social and economic legislation . . . that does not employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the legislative means are rationally related to a legitimate governmental purpose. Moreover, such legislation carries with it a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality. . . . [S]ocial and economic legislation is valid unless “the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [a court] can only conclude that the legislature’s actions were irrational.” This is a heavy burden

Hodel, 452 U.S. at 331, 332, 101 S. Ct. at 2387 (citations omitted; emphasis added).

1. The Purpose of the Hiring Preference is Legitimate

The purposes set forth for the preference are legitimate purposes for which the government can act and regulate.

Idaho Code § 67-5401 *et seq.* create the Commission for the Blind and Visually Impaired. The purposes of the Commission are:

(1) to relieve blind persons from the distress of poverty; (2) to encourage and assist blind persons in their efforts to become socially and economically independent and to render themselves more self supporting; and (3) to enlarge the opportunities of blind persons to obtain education, vocational training and employment.

Idaho Code § 67-5401. The apparent purpose for the hiring preference is found in Idaho Code § 67-5409 which provides that the administrator “shall be experienced in work for the blind” Thus, the purpose for the hiring preference is to insure that the administrator has knowledge of working with the blind and of the needs and interests of the blind and visually impaired. Coupling this specific purpose with the stated purposes of the Commission, the purpose of the hiring preference is to ensure that the administrator is experienced in working with issues such as relieving blind persons from the distress of poverty, encouraging social and economic independence and enlarging opportunities for the blind and visually impaired.

When taken as a whole, there is no doubt that the purpose of the preference provision is legitimate. The advancement and welfare of the blind is a legitimate government purpose and has even been mandated with requirements such as the Americans with Disabilities Act and the Randolph-Sheppard Act. Since we have concluded that the preference is based on a legitimate government purpose, the next question is whether the preference is rationally related to that purpose.

2. The Preference is Rationally Related to the Purposes

In furtherance of the above purposes, Idaho Code § 67-5409 requires that, when hiring an administrator for the Commission, preference shall be given to an equally qualified blind person.

In order to be rationally related to a legitimate government purpose, the classification must not be arbitrary and must bear some nexus or connection to the stated purpose. In this case, preferring an equally qualified blind applicant bears a substantial nexus to the purpose

of ensuring that the administrator is experienced with, and educated as to, the conditions and concerns of the blind and visually impaired. There is no valid argument that a preference for a blind administrator is arbitrary or is not reasonable to further such purposes.

II.

CONCLUSION

The hiring preference for an equally qualified blind administrator is rationally related to the legitimate purpose of ensuring that the administrator is experienced in working with the blind and visually impaired. Therefore, the preference provision is constitutional under the Equal Protection Clause of the Fourteenth Amendment. Since the preference is constitutionally permissible, Idaho Code § 67-5409 does not constitute “reverse discrimination” and does not require modification.

I hope this has adequately answered your inquiry. If you have any further questions regarding this or any other matter, please do not hesitate to contact me.

Very truly yours,

KEVIN D. SATTERLEE
Deputy Attorney General
Contracts & Administrative Law Division