

Subject

*Citizen's Ordinance  
Enactment Experiment*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

August 5, 1974

Opinion No. 74-259

Mr. Charles K. Hyter  
City Attorney  
P.O. Box 1567  
Hutchinson, Kansas 67501

RE: Opinion concerning the validity of a city ordinance which grants the right of judicial review in a county district court.

Dear Mr. Hyter:

In response to your opinion request of July 18, 1974, regarding the above captioned matter, we have reviewed the enclosed Ordinance #33-312, recently adopted by the city of Wichita, together with the related Kansas laws, and are of the opinion that in this instance judicial review pursuant to the city ordinance is valid and permissible.

Section one of the Wichita ordinance incorporates by reference a number of provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., including K.S.A. 44-1005 and 1011. The second paragraph of K.S.A. 44-1011 provides in pertinent part the following:

"The attorney general, county attorney or any person aggrieved by an order made by the commission may obtain judicial review thereof in the said court by filing with the clerk of said court within thirty (30) days from the date of service of the order, a written appeal praying that such order be modified or set aside . . . ."

[Note, appropriate modifications are made in the ordinance adapting it to city usage.]

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Another pertinent statute is K.S.A. 60-2101 which states:

"(a) A judgement rendered or final order made by a court or any other tribunal, board or officer exercising judicial or quasi-judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court."

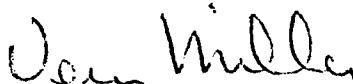
The jurisdictional grant given by K.S.A. 60-2101 above appears to be sufficiently broad to permit judicial review since a city commission on civil rights created by ordinance in our opinion would constitute a "tribunal, [or] board . . . exercising . . . quasi-judicial function" under the authority of the city ordinance. It should be pointed out, however, that the right of judicial review in this instance would derive from K.S.A. 60-2101 and not K.S.A. 44-1011, to review any order of such a commission.

Article 3, Section 6(b) of the Kansas Constitution states:

"The district courts shall have jurisdiction in their respective districts as may be provided by law."

Judicial review, therefore, in the proposed situation would be based upon a statutory grant of jurisdiction (K.S.A. 60-2101), although the body whose order was sought to be reviewed would not be a creature of state law, but of city legislation. Although we are unable to find any precedent in our Kansas law to support this opinion, we likewise cannot find any precedent to the contrary. Thus, in our opinion the constitutional and statutory requirements are satisfied in this particular situation.

Very truly yours,



VERN MILLER  
Attorney General

VM:JTM:bw