

FILE

Subject

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STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

October 1, 1974

Opinion No. 74- 331

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

Dear Mr. Hyter:

You inquire concerning certain portions of an ordinance which amends section 37-5 of ch. 37 of the Code of the City of Hutchinson, 1973, concerning the procedure for disposition of complaints alleging unlawful employment or discriminatory practices. The question posed is "whether or not the City can grant to a 'Hearing Board,' as it has on page 3 of the proposed Ordinance, the affirmative powers as are shown on page 5 of the proposed Ordinance."

Under the procedure set out on page 3, if it is determined that probably cause exists to credit the allegations of a complaint, it may be referred to a five-member hearing board, either before or after efforts have been made to eliminate the alleged unlawful practice:

"In case of failure to eliminate such practice, or in advance thereof, if in the judgment of the commissioner or the commission circumstances so warrant, said commissioner or the commission shall cause to be issued and served in the name of the commission, a written notice... requiring the person... named in such complaint, hereinunder referred to as respondent, to answer the charges of such complaint at a hearing before a board of five (5) people, hereinafter referred to as the hearing board, at a time not less than ten (10) days after the service of said notice. The composition of the hearing board shall be as follows: Two members of the hearing board shall be from the human relations commission, said two members to be appointed by the chairman of the human relations commission, who shall serve on the hearing board on a case-by-case basis,... and the remaining three members shall be citizens of the City of Hutchinson, Kansas, and shall be appointed by the mayor, with the consent of the governing body..."

On page 4 of the Ordinance, the board is empowered to issue subpoenas. Its authority is further amplified thus:

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"If, upon all the evidence in the hearing, the hearing board shall find a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this act, the hearing board shall state their finding of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or such unlawful discriminatory practice and to take such affirmative action, including but not limited to the hiring, reinstatement or upgrading of employees, with or without back pay, and the admission or restoration of membership in any respondent labor organization; the admission to full and equal enjoyment of the goods, services, facilities and accommodations [sic] offered by any respondent place of public accommodation denied in violation of this Chapter, as, in the judgment of the hearing board, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance."

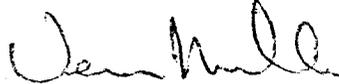
As you point out, the ordinance closely parallels provisions of the Kansas Act Against Discrimination; with the exception that the City has granted to an independent board, rather than the Human Relations Commission, certain affirmative powers. The Human Relations Commission and the hearing board are equally creatures of municipal ordinance, and the governing body is free to apportion between them such powers as it deems fit, which are properly within the legislative and administrative authority of the city. The administration of a city ordinance concerning discriminatory practices is surely a proper matter of municipal concern, and within the municipal police power. The remedial measures made available in this ordinance, including cease and desist orders and orders for affirmative corrective steps, may appropriately be vested in whatever municipal agency the governing body deems fit, such as here, the hearing board.

In opinion no. 74-259, we concluded that K.S.A. 60-2101(a) provided the necessary jurisdictional basis for review by a district court of orders of a municipally-created body administering a human relations ordinance, which body exercises "judicial or quasi-judicial functions." As we understand your present inquiry, it extends only

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to whether the allocation of powers under the ordinance between the Commission and the hearing board is permissible now that no question is raised concerning the jurisdictional basis for judicial enforcement of those powers which we have concluded may properly be vested with the hearing board. As indicated in opinion no. 74-259, jurisdictional review of orders of the Commission or the board by the district court may be based on K.S.A. 60-2101. Jurisdiction for enforcement of cease and desist orders must be found elsewhere. Certainly, however, the allocation of powers to the proposed board is within the police power of the city.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:tp