



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

January 27, 1976

ATTORNEY GENERAL OPINION NO. 76- 31

Mr. Anthony D. Lopez
Executive Director
Kansas Commission on Civil Rights
535 Kansas Avenue
Topeka, Kansas

Re: Labor and Industries--Acts Against Discrimination--
Mandatory Contract Provisions for State and Municipalities

Synopsis: The mandatory contract provisions required by the Kansas Acts Against Discrimination when the contracting agency is the state or any county or municipality or other political subdivision of the state, apply not only to construction, alteration or repair of public building contracts; but also to any contract for the acquisition of materials, equipment, supplies or services.

The reporting provisions of K.S.A. 44-1031 apply to all contractors regardless of the size of the contractor's workforce.

The provisions of K.S.A. 44-1030(c) require the contractor to comply with the reporting requirements of K.S.A. 44-1031.

The legal recourse available to the commission to require compliance by the contracting agency is those remedies available under K.S.A. 44-1032 including full discovery procedures and complaint and hearing procedure pursuant to K.S.A. 44-1033.

The commission may pursuant to K.S.A. 44-1034 adopt suitable rules and regulations to carry out the provisions of K.S.A. 44-1032.

An order of the commission becomes final when entered and when neither party has appealed

Mr. Anthony D. Lopez
January 27, 1976
Page 2

from the commission's order.

A sub-contractor may file a formal complaint under the provisions of K.S.A. 44-1009.

* * * *

Dear Mr. Lopez:

You inquire whether the mandatory contract provisions for the state, county or municipalities under the Kansas Acts Against Discrimination applies only to construction contracts.

K.S.A. 44-1030 provides in part:

"Every contract for or on behalf of the state or any county or municipality or other political subdivision of the state or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or for the acquisition of materials, equipment, supplies or services, shall contain provisions by which the contractor agrees that..." [Emphasis supplied.]

This statute applies not only to construction contracts, i.e., "contracts for the construction, alteration or repair of any public building or public work," but also to any contract "for the acquisition of materials, equipment, supplies or services". When the term "or" is used it is presumed to be used in the disjunctive sense, unless the legislative intent is clearly contrary. The language of this section makes it clear that the legislative intent was to require the contracts involving the above cited activities be subject to the requirements of K.S.A. 44-1030. The suggestion has been advanced that the title of this provision restricts its application to construction contracts. We have reviewed the title to this enactment, found at ch. 194, §15, L. 1972, and find nothing whatever to support this suggestion. The descriptive phrases

added at the beginning of the section by the Revisor of Statutes does refer only to contracts for construction or repair of buildings or public works. However, this descriptive editorial guidance does not constitute the title to the bill. Obviously, the plain and unambiguous statutory language must control. Phrases added by the Revisor of Statutes for reader guidance in preparation of the Kansas Statutes Annotated can in no way be regarded as instructive interpretive matter in the resolution of questions arising out of the statutory language itself.

Secondly, you inquire whether the reporting provisions of K.S.A. 44-1031 apply to all contractors regardless of the size of their workforce.

K.S.A. 1975 Supp. 44-1031 provides in part:

"Every person as defined in subsection (a) of K.S.A. 1975 Supp. 44-1002 who wishes to enter into a contract which is covered by the provisions of K.S.A. 44-1030..." [Emphasis added]

The above cited statute contains no language that would limit the reporting requirements only to contractors of a certain size. Therefore, the provisions of K.S.A. 44-1031 apply to all contractors regardless of the size of their workforce.

Thirdly, you inquire if the provisions of K.S.A. 44-1030(c) require a contractor merely to comply with the reporting provisions or whether it also requires the contractor to adhere to his proposed manner in which he shall recruit and screen personnel while completing his responsibilities under the contract.

K.S.A. 44-1030(c) provides:

"(c) If the contractor fails to comply with the manner in which he reports to the commission in accordance with the provisions of section 15 (44-1031) of this act, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;" [Emphasis added]

Mr. Anthony D. Lopez
January 27, 1976
Page 4

This subsection requires only that the contractor comply with the reporting requirements of K.S.A. 44-1031 and does not require that the contractor comply with what he has reported he will do to comply with the act. Failure to report to the commission by the contractor under K.S.A. 44-1031 is deemed by operation of law to be a breach of the contract, which then would permit the contracting agency to cancel, terminate or suspend in whole or in part the contract. You should also note that the language of the statute does not mandate that the contracting agency cancel, terminate or suspend the contract, but instead states that the contracting agency "may" cancel, terminate or suspend the contract in whole or in part.

You next inquire as to what legal recourse is available to the commission to require compliance by the contracting agency under K.S.A. 44-1032.

K.S.A. 44-1032 in part provides:

"The contracting agency shall be responsible for assuring compliance with the provisions of section 14 [44-1030] of this act. The commission, on its own motion or at the request of the contracting agency may review compliance with the provisions of this act. [*]..."
[Emphasis added]

This portion of K.S.A. 44-1032 allows the commission "on its own motion" to review compliance with the provisions of the act. The remainder of K.S.A. 44-1032 then sets forth the available remedies that the commission may utilize as its legal recourse to require compliance by the contracting agency, including full discovery procedures. The commission may also utilize the provisions of K.S.A. 44-1033 which provides:

"If the compliance review conducted by the commission reveals any violation of the Kansas act against discrimination, the commission may initiate a complaint and process such complaint in the manner provided for processing complaints of unlawful employment practices. The information gathered in the course of the compliance review may be used in processing the complaint."

Mr. Anthony D. Lopez
January 27, 1976
Page 5

Therefore, the provisions of K.S.A. 44-1032 and K.S.A. 44-1033 are the legal recourses available to the commission to require compliance by the contracting agency.

You next inquire if it is proper under the provisions of K.S.A. 44-1032 and K.S.A. 44-1034, for the commission to establish procedures for the contracting agency to carry out their responsibilities and permit the commission to obtain uniform compliance of K.S.A. 44-1032, state-wide.

K.S.A. 44-1034 provides:

"The commission may adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this supplemental act.[*]."

The commission has the statutory authority to adopt and promulgate rules to implement the provisions of K.S.A. 44-1032.

You next inquire as to when a commission order finding a contractor guilty of a violation of the Kansas Act Against Discrimination becomes final pursuant to the provisions of K.S.A. 44-1030(d). The order of the Commission becomes final when entered and when neither party has appealed from it. The very definition of final is that no other course of action is available to either party and that all administrative and judicial proceedings have been exhausted or utilized within the proper time.

You next inquire if the sub-contractor relationship to a prime contractor permits a sub-contractor the legal redress of filing a formal complaint under the provisions of K.S.A. 44-1009.

K.S.A. 1975 Supp. 44-1009 provides in part:

"(a) It shall be an unlawful employment practice:

(1) For an employer, because of the race, religion, color, sex, physical handicap, national origin or ancestry of any person to refuse to hire or employ, or to bar or to discharge from employment such person or to otherwise discriminate against such person in compensation or in terms, conditions, or privileges of employment; or to limit, segregate,

Mr. Anthony D. Lopez
January 27, 1976
Page 6

separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business motive."

If the sub-contractor is the object of an alleged discriminatory practice there is no statutory prohibition that would preclude the sub-contractor from filing a complaint if the sub-contractor falls within the purview of K.S.A. 1975 Supp. 44-1002(a) which defines person as:

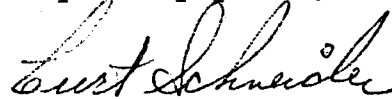
"(a) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in Bankruptcy or receivers..."

and K.S.A. 1975 Supp. 44-1005 which provides in part:

"Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint..."

The above cited sections do not prohibit a sub-contractor from filing a complaint.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/EJY/cgm