



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider,
Attorney General

June 28, 1976

ATTORNEY GENERAL OPINION NO. 76- 192

The Honorable E. Richard Brewster
State Representative
400 Croix Street
Post Office Box 5186
Topeka, Kansas 66605

Re: Cities--Contracts--Civil Rights

Synopsis: A Kansas municipality may adopt additional requirements, supplementing the Kansas Act Against Discrimination, which must be met by persons contracting with the city, in order to implement the declared state policy of assuring equal opportunity for all persons regardless of race. Kansas cities may adopt and enforce conditions and requirements in its contracts, in addition to those required by the Kansas Act Against Discrimination, which require the contracting party to demonstrate compliance with policies of the city designed to alleviate racial discrimination and stimulate equal employment opportunities for all persons, including members of minority groups.

* * *

Dear Representative Brewster:

You advise that the Executive Director of the Topeka Human Relations Commission has issued a memorandum which states in part thus:

"On September 20, 1973, the City of Topeka implemented a policy requiring an affirmative action plan from any business or corporation that enters into a contract with or submits bids to the city. Since the implementation

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of this policy, there must be an approved affirmative action plan on file with the Human Relations Commission or one must be included with the bid when it is submitted. Any bids submitted without the above requirements will be null and void. The bid will be awarded by the Board of Commissioners to the lowest and best bidder."

In addition, you advise that the City of Topeka requires that any contracting bidder certify that he has contacted minority contractors' associations in seeking subcontractors for the project. The required certification states in part thus:

"A bidder will not be eligible for award of a contract under this invitation for bids unless such bidder has submitted as a part of its bid the following certification which will be deemed a part of the resulting contract."

The certification goes on to state that the bidder has offered "subcontract bid opportunities to minority contractors by contacting the Topeka Minority Contractors' Association," and further requires the bidder to state the name of the project, the date upon which a written contract was made, and a list of subcontract bids which were offered or requested.

You refer to K.S.A. 44-1030, which states in pertinent 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 public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that"

You inquire whether this and other provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 *et seq.* are preemptive of the field of civil rights compliance in municipal contracting, and precludes any additional or further requirements by the city. In

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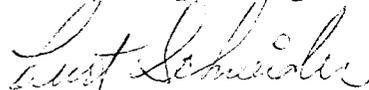
my judgment, the provisions of the Kansas Act Against Discrimination are not preemptive of the field. Nothing in K.S.A. 44-1030 or K.S.A. 1975 Supp. 44-1031 suggests that municipalities are not legally free to supplement and augment those requirements as they deem appropriate. In *Kansas City v. Henre*, 96 Kan. 794, 153 Pac. 548 (1915), the court stated thus:

"An ordinance enacted in the exercise of the police power is not necessarily inconsistent with a state law on the same subject because the city provides for greater restrictions or makes higher standards than is provided or made by statute." 96 Kan. at 797.

See also, Hutchinson Human Relations Commission v. Midland Credit Management, Inc., 213 Kan. 308, 517 P.2d 158 (1973) and *Leavenworth Club Owners Ass'n v. Atchison*, 208 Kan. 318, 492 P.2d 183 (1971).

The city need not, of course, look to express statutory authority to support such additional requirements as it deems appropriate in its efforts to alleviate racial discrimination through the exercise of its municipal contracting powers. Since the adoption of Article 12, § 5 of the Kansas Constitution, the home rule amendment, cities have constitutional authority to legislate concerning matters of local concern and administration. Municipal contracts are clearly of local concern, and the city may, in the exercise of its police power, impose such requirements as it deems necessary, in addition to the provisions of the Kansas Act Against Discrimination, in order to implement the declared policy of the state to assure equal opportunity to all persons regardless of race. K.S.A. 44-1001.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj