



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 14, 1977

ATTORNEY GENERAL OPINION NO. 77-231

Mr. Robert L. Earnest
City Attorney
120 West Third Street
Post Office Box 72
Russell, Kansas 67665

Re: Cities--Retirement--Age 65

Synopsis: A municipal provision requiring mandatory retirement of city employees at age 65 does not violate the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§ 621 et seq., nor does it constitute a denial of equal protection to employees over the age of 65.

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Dear Mr. Earnest:

You inquire concerning the legality of a provision requiring mandatory retirement of city employees at age 65. In particular, you express concern that recent judicial decisions may have called such provisions into question as unlawfully discriminatory.

The Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§ 621 et seq., prohibits discrimination in employment on the basis of age against persons who are at least 40 years of age but not more than 65. Thus, there is no federal statutory provision which prohibits mandatory retirement of employees at age 65. In Massachusetts Board of Retirement v. Murgia, 421 U.S. 974, 44 L. Ed. 2d 466, 95 S. Ct. 1973 (1976), the Court held that a Massachusetts statute requiring mandatory retirement of state police officers at the age of 50 did not violate the Equal Protection clause of the Fourteenth Amendment of the United States

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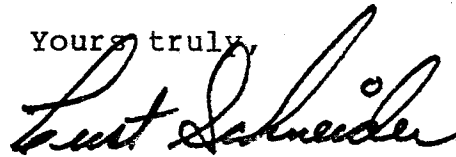
Constitution. In reaching this decision, the Court held that it was necessary only to determine whether there was a rational basis for such a requirement, and applying this test, concluded that the state had demonstrated such a basis for its requirement.

I am aware of no reported judicial decision in which a court has concluded as a matter of law that mandatory retirement at age 65 constitutes a denial of equal protection to the class of employees over age 65. In the absence of any statutory requirement or judicial decision compelling a contrary result, I can only conclude that a provision for mandatory retirement at age 65 does not on its face, as a matter of law, constitute a denial of equal protection to those employees over the age of 65. In the Murgia case, the Court pointed out that the review of Massachusetts maximum age limitations by state legislative commissions had proceeded on the principle that

"maximum retirement age for any group of employees should be that age at which the efficiency of a large majority of the employees in the group is such that it is in the public interest that they retire."

Inflexible mandatory retirement provisions have increasingly come into question, because of the substantial economic and psychological effects upon many employees whose abilities are not at all impaired at age 65. Congress is considering legislation to increase the age group of persons protected under the Age Discrimination in Employment Act, which, if enacted, would likely draw into question mandatory retirement at age 65. However, under existing federal legislation, and decisions of the Supreme Court handed down as of the end of the present term, I find no basis upon which to conclude that mandatory retirement at age 65 is unlawful.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj