



STATE OF KANSAS

Office of the Attorney General

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Curf T. Schneider
Attorney General

July 18, 1977

ATTORNEY GENERAL OPINION NO. 77- 232

Mr. L. O. Bengtson
City Attorney
114 East Iron
Post Office Box 903
Salina, Kansas 67401

Re: Cities--Discrimination--Other Governmental Units

Synopsis: A Kansas city which has adopted an ordinance prohibiting discrimination in public accommodations, housing and employment on the basis of race, sex, religion, age, color, national origin, ancestry, physical handicap or marital status may lawfully enforce such ordinance against other governmental units having offices within said city, including agencies of the state, county, and school district.

* * *

Dear Mr. Bengtson:

You advise that the City of Salina has adopted an ordinance declaring the practice and policy of discrimination against individuals by reason of race, sex, religion, age, color, national origin, ancestry, physical handicap or marital status to be a matter of concern for the city, and has adopted an ordinance to eliminate and prevent discrimination in all employment relations, public accommodations and housing. The question has arisen whether the city may enforce this ordinance against other governmental agencies such as the state, the county, school districts and other governmental agencies having offices located within the corporate limits of the City of Salina.

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In *Hutchinson Human Relations Commission v. Midland Credit Management, Inc.*, 213 Kan. 308, 517 P.2d 158 (1973), the court held that "the enactment of a civil rights ordinance is a proper exercise of a municipality's police power as tending to promote the health, safety, convenience and general welfare of its citizens." 213 Kan. at 312. The ordinance is one which the city is authorized to enact in the exercise of its constitutional legislative powers, granted directly to it by Article 12, § 5 of the Kansas Constitution.

Regarding the relationship of the ordinance to the Kansas Act Against Discrimination, K.S.A. 44-1001 *et seq.*, the court pointed out that the latter act lacked any provision suggesting that the state had preempted the field of civil rights and the proscription of discrimination in employment. Thus, the city was free to legislate regarding the same subject matter of the statutory act, and to enlarge upon it, as the city deemed needful and appropriate. The court cited two cases, *District of Columbia v. Thompson Co.*, 346 U.S. 100, 97 L.Ed. 1480, 73 S.Ct. 1007 (1952) and *Commonwealth v. Beasy*, 386 S.W.2d 444 (Ky.) in which the courts each referred to the municipal power regarding civil rights as a rightful exercise of the municipal police power and virtually as broad as the legislative power of the state itself.

The question then arises whether the jurisdiction of the municipal civil rights ordinance extends to public employers, such as the state itself, the county, school districts, and other governmental employers having employees within the city. In *City of Hutchinson v. Hutchinson, Kansas, Office of Kansas State Employment Service*, 213 Kan. 399, 517 P.2d 117 (1973), the city, on behalf of its municipal human relations commission, sought an order from the district court ordering the defendants, the Hutchinson office of the Kansas State Employment Service, and the supervisor of employment relations there, to furnish it certain documents. The district court dismissed the action on the ground that it lacked jurisdiction of the subject matter, reciting that jurisdiction of the subject matter of an action is vested by statute and is not ordinarily conferred by consent, waiver or estoppel, and that the jurisdiction of the court is fixed by statute and Article 3, § 6 of the Kansas Constitution. On appeal, the Supreme Court held that the district court correctly dismissed the action, although for the wrong reason, finding that the district court lacked jurisdiction of the necessary parties to the action to permit it to proceed, because the state labor commissioner had not been served by service upon the attorney general. Thus, the court held that the district court did have jurisdiction of the subject matter of the action, erred in holding otherwise, but properly dismissed the action for lack of jurisdiction over the

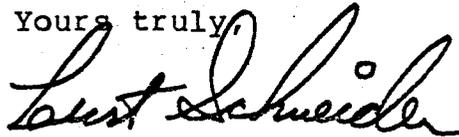
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necessary parties by reason of lack of service. The case thus stands, by clear inference, for the proposition that the state, as an employer, is not exempt from the jurisdiction of a municipal civil rights ordinance providing redress against employment discrimination. The city ordinance thus protects state employees who are employed by state agencies in offices within the city.

Nothing in the Kansas Act Against Discrimination suggests that the state has preempted the field of discrimination, either in the public or the private sector. The Kansas Civil Rights Commission is not constituted the exclusive forum for the hearing and determination of complaints regarding discrimination for any class of employees, public or private, so far as the act suggests. Under Article 12, § 5 of the Kansas Constitution, the city is empowered to regulate its "local affairs and government." An instance of alleged discrimination, e.g., which occurs in the City of Salina, is equally a "local" affair whether the offender be a Delaware corporation of the State of Kansas, for the alleged discrimination, and its harmful effects occur in the city itself. The ordinance clearly deals with a subject which falls within the police power of the city, discrimination in employment, public accommodations and housing, and represents a valid exercise of that police power. In my judgment, all public employers within the territorial jurisdiction of the city are subject to that ordinance unless there is a compelling constitutional or statutory reason to the contrary. I find no constitutional ground for exempting other governmental units situated in the City of Salina from compliance with a lawful and constitutional human relations ordinance of that city, nor is there any statutory ground for exempting such employers from its coverage.

Thus, in my judgment, the City of Salina may constitutionally enforce its ordinance concerning discrimination against other governmental agencies located in the city, including agencies of the state, county, school district and other governmental units.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj