



STATE OF KANSAS

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November 20, 1979

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ATTORNEY GENERAL OPINION NO. 79-269

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

Re: Labor and Industries--Kansas Acts Against
Discrimination--Filing Complaints

Synopsis: An adjudication by a local human relations commission, acting under authority of a municipal anti-discrimination ordinance substantially identical to the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq., would, pursuant to the doctrine of res judicata, bar subsequent proceedings before the Kansas Commission on Civil Rights upon a complaint arising out of the same alleged discriminatory act.

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Dear Mr. Bengtson:

You state that the City of Salina has adopted an ordinance (similar to the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq.) which prohibits discrimination and creates a Human Relations Commission, one of the functions of which is to hold public hearings on appeals from decisions of the Director of Human Relations. You request our opinion "as to whether an adjudication by the Salina Human Relations Commission as to a violation of the Salina ordinance would

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bar the complainant from filing a similar complaint with the Kansas Civil Rights Commission under Article 10 of Chapter 44 of Kansas Statutes Annotated."

Before considering the res judicata effect of such a "local" adjudication, it should first be noted that it has been held that a municipal civil rights, anti-discrimination ordinance is within a city's home rule power and is a valid exercise of a city's police power. Hutchinson Human Relations Comm. v. Midland Credit Management, Inc., 213 Kan. 308 (1973). Further, the Hutchinson case clearly indicates that concurrent jurisdiction exists in civil rights cases such that both the Kansas Commission on Civil Rights and local commissions have authority to act in this field. A complainant may, therefore, choose whichever forum he or she wishes to utilize in seeking possible redress against discriminatory practices.

A complainant who chooses to proceed under the Salina ordinance and causes the matter to be "adjudicated" at the local level, however, may not have the identical issues litigated a second time before the Kansas Commission on Civil Rights ("KCCR"). The doctrine of res judicata applies to an adjudication by an administrative agency arising out of adversary proceedings. Hartman v. State Corporation Commission, 215 Kan. 758, 765 (1974); United States v. Utah Constr. & Min. Co., 384 U.S. 394, 422 (1966). As applied to the decisions of administrative agencies, the doctrine can bar both proceedings before another administrative agency and relitigation of the same factual issues in subsequent judicial proceedings. Whitman Elec., Inc. v. Local 363, Int. Bro. of Elec. W., 398 F.Supp. 1218, 1221 (1974). Therefore, assuming that the Salina ordinance is substantially similar to the Kansas Act Against Discrimination, it is our opinion that an adjudication by the Salina Human Relations Commission would bar subsequent proceedings before the KCCR upon a complaint arising out of the same alleged discriminatory act.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General