



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

June 17, 1986

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86- 90

Greg A. Bengtson  
City Attorney  
129 S. 8th, P.O. Box 380  
Salina, Kansas 67402-0380

Re: Constitution of the State of Kansas--  
Corporations--Cities' Powers of Home Rule

Synopsis: An ordinance which authorizes a local human relations commission to award compensatory and punitive damages in a discrimination case is incidental to effectuation of a public purpose, i.e. the elimination of discrimination within a community, and constitutes a valid exercise of city home rule powers. While a local human relations commission lacks standing in district court to enforce such an award, a victim of discrimination may file suit for enforcement in district court. Cited herein: K.S.A. 1985 Supp. 44-1005; K.S.A. 44-1011; 60-217; K.S.A. 1985 Supp. 60-2101(d); Kan. Const., Art. 12, §5.

\* \* \*

Dear Mr. Bengtson:

You request our opinion concerning enforcement of an order of the Salina Human Relations Commission which awards monetary damages in a discrimination case. You indicate that Salina Code Section 13-58(13) confers authority on the Human Relations Commission to award such damages, and that in a recent case the Commission made such an award to the complainant. However, the respondent has refused to comply

with the order, and you pose several questions concerning enforcement of it.

You first ask whether the Salina Human Relations Commission can pursue a lawsuit in Saline County District Court seeking to enforce the order. In this regard, we note that it is a well settled principle that municipalities may, in the exercise of their home rule power as provided by Kan. Const., Art. 12, §5, establish human relations agencies. Hutchinson Human Relations Comm. v. Midland Credit Management, Inc., 213 Kan. 308, 313 (1973). State provisions, establishing the Kansas Commission on Civil Rights (K.C.C.R.) which in effect are parallel to many local civil rights ordinances, are not preemptive. 213 Kan. at 315. It is also clear that a local commission may bring an action in district court for specific performance of a conciliation agreement. H.H.R.C. v. Midland, supra.

However, while K.S.A. 1985 Supp. 60-2101(d) confers authority on district courts to hear appeals of final orders made by municipal agencies, and K.S.A. 44-1011 confers authority on the K.C.C.R. to file suit in district court to enforce its final orders [including awards of damages for pain, suffering and humiliation not exceeding \$2000 (see K.S.A. 1985 Supp. 44-1005(d))], no statute confers standing on a local human relations agency to file suit to enforce an award of monetary damages entered by the agency in a discrimination case. In this regard, K.S.A. 60-217 provides that every action shall be prosecuted in the name of the real party in interest, and the Kansas Supreme Court has indicated that a local commission does not have standing to file suit for monetary damages:

"We do not view the Commission as being an aggrieved person in the context of this case, or in the sense of having suffered an injury or wrong compensable in dollars. It is difficult for us to conjure up a basis for monetary damages so far as the Commission is concerned, and its counsel was unable, at oral argument, to assist us greatly in this respect."  
H.H.R.C. v. Midland, supra at 316.

Accordingly, it is our opinion that a local human relations commission lacks standing to enforce an award of monetary damages which it has entered in favor of a complainant in a discrimination case.

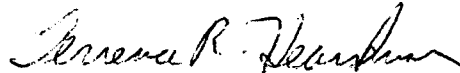
You next ask whether amendment of the Salina Code to include a provision similar to K.S.A. 44-1011 would provide a means of enforcement of the Human Relations Commission Order. In this regard, it is our opinion that the rules of standing prescribed by K.S.A. 60-217 may be modified only by enactments of the state legislature; cities, even in the exercise of their extensive home rule powers, lack authority to legislate on the subject of standing in district court, as such is not a matter of local concern within the meaning of Article 12, Section 5 of the Kansas Constitution.

Your final question is "whether Salina Code Section 13-58(13) authorizing the Salina Human Relations Commission to award compensatory and punitive damages represents an enforceable exercise of home rule powers." In response, we note that while the Kansas Supreme Court has not spoken on this issue, it has been addressed by Professor Barkley Clark in the comprehensive article State Control of Local Government in Kansas: Special Legislation and Home Rule, 20 Kan. L. Rev. 631, 676. In that article, Professor Clark indicates that the "local affairs and government" language of the home rule amendment could be invoked to limit some municipal attempts to enact "private law" (i.e. ordinances which regulate private legal relationships). However, he also states that if an ordinance's "impact on 'private' law is merely incidental to effectuation of a public purpose, it might well stand." Id. In our judgment, an ordinance which authorizes a local human relations commission to award compensatory and punitive damages in a discrimination case is incidental to effectuation of a public purpose, i.e. the elimination of discrimination within a community, and constitutes a valid exercise of city home rule powers. However, as indicated above, in the event the respondent refuses to comply with an order awarding damages (and does not appeal the order to district court), the rules of standing require that the complainant, not the local human relations commission, enforce the award in district court.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General