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ATTORNEY GENERAL OPINION NO. 87- 96

The Honorable Jessie M. Branson
State Representative, Forty-Fourth District
800 Broadview Drive
Lawrence, Kansas 66044-2423

Re: Labor and Industries--Kansas Acts Against
Discrimination--Unlawful Discriminatory Practices;
Application to Rotary Clubs

Synopsis: Rotary Clubs which have (1) inclusive rather than
exclusive membership practices, (2) meetings open
to visitors, (3) business attributes such as
extensive publishing activities and a complex
structure and (4) important business advantages and
opportunities are not the type of fraternal or
social associations contemplated by K.S.A.
44-1002(h) and thus are not exempt from the Kansas
Acts Against Discrimination, K.S.A. 44-1001 et
seq. Cited herein: K.S.A. 44-1001; 44-1002;
44-1009; 44-1015; 44-1110; K.A.R. 21-46-2.

* * *

Dear Representative Branson:

As State Representative for the Forty-Fourth District, you
request our opinion regarding the application of the Kansas
Acts Against Discrimination, K.S.A. 44-1001 et seq., to
Rotary clubs.

On May 4, 1987, the United States Supreme Court held that
California's Unruh Civil Rights Act, which entitles all
persons, regardless of sex, to full and equal accommodations,

advantages, facilities, privileges, and services in all business establishments in the State of California, does not violate the First Amendment to the United States Constitution by requiring California Rotary Clubs to admit women. The United States Supreme Court did not determine whether California's Unruh Act does indeed extend to membership in Rotary Clubs, that determination was made by the Court of Appeal of California. Thus, the only issue discussed by the United States Supreme Court was the constitutionality of applying California's Unruh Act to California Rotary Clubs, using as a "given" the California court's determination that the Unruh Act does apply to Rotary Clubs. Board of Directors of Rotary International, et al. v. Rotary Club of Duarte et al., 55 U.S.L.W. 4606 (U.S. May 4, 1987) (No. 86-421).

You have asked whether the Kansas Acts Against Discrimination contain provisions similar to the California Unruh Act which would make the Kansas Act applicable to Rotary Clubs. It must first be noted that neither the California court's interpretation of the California Act, nor the United States Supreme Court's decision in Rotary Club of Duarte, have any controlling effect in a determination of the application of the Kansas Act, other than to tell us that if the Kansas Act is held to apply to Rotary Clubs, such an application would not violate the First Amendment to the United States Constitution. See Rotary Club of Duarte, 55 U.S.L.W. at footnote 8. Though not controlling, the provisions of the Unruh Act, the California court's application of those provisions, and the U.S. Supreme Court's analysis of Rotary Club characteristics may be helpful in determining the extent of the Kansas Act's application. With this in mind, we will proceed to analyze the applicability of the Kansas Acts Against Discrimination to Rotary Clubs in the State of Kansas.

Kansas statutes currently prohibit discrimination against persons in places of public accommodations, K.S.A. 44-1001 et seq., employment, K.S.A. 44-1110 et seq., and housing, K.S.A. 44-1015 et seq. K.S.A. 44-1001 provides in part:

". . . It is hereby declared to be the policy of the state of Kansas to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation, or separation in all places of public accommodations covered by this act. . . .

"It is also declared to be the policy of this state to assure equal opportunities and encouragement to every citizen regardless of race, religion, color, sex, physical handicap, national origin or ancestry, in securing and holding, without discrimination, employment in any field of work or labor for which he is properly qualified, to assure equal opportunities to all persons within this state to full equal public accommodations, . . . without distinction on account of race, religion, color, sex, physical handicap, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations as covered by this act . . . are civil rights of every citizen.

"To protect these rights, it is hereby declared to be the purpose of this act to establish and to provide a state commission having power to eliminate and prevent segregation and discrimination, or separation in employment, in all places of public accommodations covered by this act, and in housing because of race, religion, color, sex, physical handicap, national origin or ancestry, either by employers, labor organizations, employment agencies, realtors, financial institutions or other persons as hereinafter provided."

K.S.A. 44-1009 provides further:

"(c) It shall be an unlawful discriminatory practice:

"(1) For any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny, or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this act because of race, religion, color, sex,

physical handicap, national origin or ancestry, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation."

"Person" and "public accommodations" are defined in K.S.A. 44-1002 as follows:

"When used in this act:

"(a) The term 'person' includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

. . .

"(h) . . . the term 'public accommodations' shall include any person as defined herein, who caters or offers goods, services, facilities, and accommodations to the public, but shall not include a nonprofit fraternal or social association or corporation."

In implementing K.S.A. 44-1009(c) (1) and 44-1002(h), the Kansas Commission on Civil Rights has promulgated K.A.R. 21-46-2 which states:

"An association or corporation shall be deemed exempt from coverage by the Kansas act against discrimination as a nonprofit fraternal or social association or corporation only if it meets all the following requirements: (a) Requirements. (1) It is organized in good faith for social or fraternal purposes;

"(2) Membership entails the payment of bona fide initiation fees or regular dues;

"(3) There exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership.

"(4) There is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates.

"(5) It is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole."

There are two apparent distinctions between the California Unruh Civil Rights Act and the Kansas Acts Against Discrimination relevant to this inquiry. First, the Unruh Act specifically entitles all persons to full and equal advantages and privileges in all business establishments of every kind as well as equal accommodations, facilities and services in such businesses. By contrast, the Kansas Act only specifies entitlement to equal goods, services, facilities and accommodations offered to the public. K.S.A. 44-1002(h). Second, the Unruh Act does not exclude non-profit fraternal or social associations or corporations from its provisions as does the Kansas Act. Thus, if we are to use the reasoning of the Court of Appeal of California, we must first determine that these two distinctions are irrelevant.

Though the Kansas Acts Against Discrimination do not specifically entitle all persons to equal advantages and privileges in all business establishments, they do provide that it is the policy of the state "to assure equal opportunities and encouragement of every citizen . . . in securing and holding, without discrimination, employment in any field of work or labor which he is properly qualified" and "to assure equal opportunities to all persons within this state to full and equal public accommodations," K.S.A. 44-1001. In finding that both Rotary International and the Duarte Rotary Club are "business establishments" subject to the provisions of the Unruh Act, the California Court of Appeal noted that "business concerns are a motivating factor in joining local clubs," and that "business benefits [are] enjoyed and capitalized upon by Rotarians and their businesses or employers." Rotary International v. Rotary Club of Duarte, 55 U.S.L.W. at 4607, citing App. to Juris. Statement C-26, 178 Cal.App.3d 1035, 1051, _____ Cal. Rptr. _____ (1986). It was also found by the California court that the Duarte Club provides goods, services and facilities to its members, as well as privileges and advantages. These goods and services include magazines

and conferences which teach managerial and professional techniques. We agree with these findings and it is therefore our opinion that, though the Kansas Act does not specifically require equality in the offering of business privileges and advantages, it does so impliedly in K.S.A. 44-1001, and further that Rotary Clubs offer goods, services and facilities, as well as business advantages and privileges, to their members thus bringing them squarely within the provisions of K.S.A. 44-1009(c)(1). Our conclusion is supported by the Kansas Supreme Court case of Kansas Commission on Civil Rights v. Sears, Roebuck and Co., 216 Kan. 306 (1975), which emphasized the court's tendency to give the Act a broad interpretation to the end of "eradicating the cancer of discrimination from our society." 216 Kan. at 313.

In the Sears case, the Kansas Supreme Court interpreted the term "public accommodations" to mean "those places which are held out as open to the general public and [to] which members of the public generally are invited to patronize or otherwise visit." 216 Kan. at 313. The court went on to state:

"Viewing Kansas Civil Rights legislation in the perspective of recent history, we discern a continuing intent on the part of the legislature to strengthen civil rights statutes to enlarge the areas of their coverage. We harbor little doubt that places of public accommodations were intended to include places where general retail trade is conducted and that in those places, distinctions are now not to be made based on race, religion, sex, physical handicap, ancestry or national origin." 216 Kan. at 316, 317.

Though the court was discussing a retail business establishment in this case, we believe its reasoning would extend to organizations such as Rotary Clubs which offer business advantages, opportunities and services as discussed above, and which virtually open their doors to public admittance. See Rotary International v. Rotary Club of Duarte, 55 U.S.L.W. at 4608, 4609. See also United States Jaycees v. McClure, 305 N.W.2d 764 (Minn. 1981). (Construing a statute very similar to K.S.A. 44-1009(c)(1), the Minnesota Supreme Court determined that Jaycees organization is a "place of public accommodation.")

These characteristics of Rotary Clubs are also important in determining whether such clubs would be exempt from the provisions of the Kansas Acts Against Discrimination as "nonprofit fraternal or social associations or corporations." Rotary International is a non-profit corporation. In determining whether the Rotary Club of Duarte was private or public in nature, the United States Supreme Court considered factors such as size, purpose, selectivity, and whether nonmembers are excluded from critical aspects of the relationship. Finding no upper limit on the membership of any local Rotary Club, a relatively high turnover rate in membership, a purpose of producing "an inclusive, not exclusive, membership" (1 Rotary Basic Library, Focus on Rotary 60-61, App. 84), and a purpose of aiding the community and raising the standards of the members' businesses and professions, the Court determined that these characteristics do not "suggest the kind of private or personal relationship to which we have accorded protection under the First Amendment." Rotary Club of Duarte, 55 U.S.L.W. at 4609. Neither do they suggest the kind of association or corporation which is organized for social or fraternal purposes, but rather for business purposes.

Using these findings and others of the United States Supreme Court as a basis for our opinion (having no specific facts before us), we conclude that Rotary International and its member clubs which are similarly situated to the Rotary Club of Duarte are not purely private fraternal or social associations or corporations and thus are not exempt from the provisions of the Kansas Acts Against Discrimination. A club which (1) is far from exclusive in its membership requirements, (2) virtually opens its meetings to the public, including women, (3) has many business attributes and (4) offers valuable business opportunities and advantages is not the type of "nonprofit fraternal or social association or corporation" contemplated by K.S.A. 44-1002(h).

Very truly yours,



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