

Approved

CW Douville 4-8-87
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:08 a.m./~~p.m.~~ on March 31, 1987 in room 526-S of the Capitol.

All members were present except:

Representatives Mead - Excused
Hensley
Dillon

Committee staff present: Roper

Jerry Ann Donaldson, Research Department
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Bob Storey, Job Stores, Inc.
Wayne Maichel, Executive Vice President, AFL-CIO
Jerry Powell, Department of Human Resources
Representative Darrel Webb
Brandon Myers, Kansas Commission on Civil Rights
Molly Daniels, Kansas Commission on Aging
Minutes of the February 26 and 27 and March 17, 18, and 19, 1987, meetings were approved by consensus.

Chairman Douville recognized Bob Storey who then testified, attachment #1.

Questions from the committee were:

1. Representative Acheson - How are the lists compiled?
How are the lists marketed?

Mr. Storey - A representative contacts companies regarding available jobs (primarily blue collar jobs at \$22,000 and under), compiles a list and enters the list into a computer. Marketing is done through advertising.

2. Representative Patrick - Why is the license fee set at an amount not to exceed \$100?

Mr. Storey - The amount was originally \$25 which Mr. Powell, Department of Human Resources thought adequate to administer the program but it was raised by the senate.

3. Representative Patrick - Is there provision in the statutes to give the Secretary of Human Resources the power by rules and regulation to regulate a business of this nature?

Mr. Storey - It is a new law but it is my understanding from Mr. Powell that rules and regulations will be developed.

Wayne Maichel was recognized and addressed the committee. He stated that the AFL-CIO did not have a strong position against the bill but did have some comments to be made about the bill. He pointed out that this would be a policy change for the state regarding employment service agencies. He noted the absence of a screening or evaluation process with this agency. Mr. Maichel stated that it was difficult to believe large companies would list job openings with numbers of applicants coming to them each day. He reiterated that labor had no position on this bill but had strong reservations about it.

Jerry Powell, Department of Human Resources, testified that he had been involved in the situation mentioned in Mr. Storey's testimony and had at a previous time testified against this type of business. He also said that he thought it to be opportunistic but since that time, he has worked with Bob Storey and been in touch with Hugh Horton in South Carolina. The South Carolina law is the basis for this bill and, according to Mr. Horton, it is working well there.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:08 a.m.~~p.m.~~ on March 31, 1987.

Mr. Powell further stated that with strict enough regulation, those offices which are opportunistic, can be kept from operation. It is not anticipated that there will be a large demand for licenses for this type of service. He felt that if this bill were enacted, there would be no need for additional funds or staff. Mr. Powell felt that \$2,500.00 would suffice for a license fee. He answered the earlier question about rules and regulations by saying that since his agency would be issuing the licenses, they should also have the authority to revoke the license if needed. The department has no opposition to the bill.

Representative Patrick asked if private employment agencies were required to have licenses and if there were any substantive regulation of private employment agencies.

Mr. Powell answered that the attorney general had rendered an opinion that a license would be required if there were a fee charged of the employee but since employment agencies bill the employer, they paid no fee. He stated that he shared the concern that the two types of services would not be governed differently. There are rules and regulations that are applicable to all kinds of businesses.

The hearing on S.B. 248 closed at this time.

Representative Webb stated that the letter from Nick Scofield, attachment #2, was a substitute for his being unable to appear before the committee on H.B. 2578. He explained the basis for the bill.

Representative Patrick expressed concern about the use of the term "communicable disease" being too general.

Committee discussion ensued as to whether the present medical section of the workers' compensation bill covers this expense. Chairman Douville explained that the committee could meet through the end of the week and that this bill would receive further hearing and discussion later in the week.

Brandon Myers, Kansas Commission on Civil Rights, testified on H.B. 2563, attachment #3.

There was a great deal of discussion regarding the bill. The chairman noted that the bill was very detailed and the committee did not have time to act on it in the limited time available. It is possible that the bill will be considered for interim study.

Molly Daniels, Kansas Department on Aging submitted testimony, attachment #4, endorsing the bill.

The committee also received a letter from Paul Bocquin, Howard, Kansas, attachment #5, in support of the bill.

Wayne Weineke, Kansas Department on Aging, was recognized and voiced support of the bill.

The meeting was adjourned at 9:58 a.m.

The next meeting will be April 1, 1987, at 9:00 a.m.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date March 31, 1987

<u>Name</u>	<u>City</u>	<u>Representing</u>
Bill Morrissey	Topeka	DHR/Work. Comp.
Braundon L. Myers	"	KCCR
Bob Storey	Topeka	JOBS INC.
Molly Daniels	Topeka	KDOA
Bob KIDD	"	DHR. - Ed. T.
RB Hodges	"	KCCI
John M. Ostrowski	"	AFL-CIO

TESTIMONY IN SUPPORT OF SENATE BILL 248
BEFORE HOUSE LABOR AND INDUSTRY COMMITTEE
PRESENTED BY BOB W. STOREY
REPRESENTING JOB STORES, INC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

First, on behalf of Job Stores, Inc., I want to thank you for allowing me to offer testimony in support of Senate Bill 248.

Senate Bill 248 originated because of an incident which happened last summer involving a former member of this House of Representatives, Bill Southern from Great Bend, Kansas. Mr. Southern purchased a franchise from Job Stores, Inc. to open a business in Wichita, Kansas. This franchise was purchased for the purpose of opening a job listing agency, which would hopefully provide employment for persons in Kansas who need employment. Once the franchise was purchased and the business opened, Mr. Southern became aware that the Kansas law had been changed three or four years ago to prohibit job listing services because of an incident which happened in Wichita, Kansas. An unscrupulous business venture was opened in Wichita that was operated as a fly-by-night business rather than a legitimate employment job listing service.

It was at that point that Mr. Southern and some of the principals of Job Stores, Inc. approached me about changing the law. Since then I have visited with the Sedgwick County District Attorney, the Kansas Attorney General and the Kansas Department of Human Resources in an attempt to prepare legislation that would be beneficial to the citizens of Kansas desiring to seek employment and would insure that job listing agencies operate

Attachment #1
House Labor and Industry
March 31, 1987

in a scrupulous manner.

Let me explain to you that Job Stores, Inc. is a publically-offered company. It is the largest privately held provider of job information in the country (both franchise and company-owned stores). A copy of all of J.O.B.S. franchise locations is attached to this testimony as Exhibit "A". J.O.B.S. is aimed at the lower-skilled, lower-salaried classifications, somewhere in the area of \$22,000.00 and below, which also happens to represent the bulk of the people in the country.

Also attached are Exhibits, "B", "C", "D", and "E":

Exhibit "B" - An article dated 1/12/87 from Forbes Magazine that details the quality of what a well-run job information service, like J.O.B.S., is able to achieve.

Exhibit "C" - In Insight, a tabloid of The Washington Times, dated 2/9/87, the article details the massive growth of the job industry and further justifies what makes the service aspect well received from people.

Exhibit "D" - Two press releases, dated 2/25/87, detailing how Job Stores, Inc. works.

Exhibit "E" - An article from Nation's Business, dated 3/87, authored by Bob Gatty. The article details the power of accurate job information service provided to people now able to help the community, help themselves and those around them.

Now I would like to explain how J.O.B.S. works. At the present time, K.S.A. 44-407 provides that a registration fee is charged for receiving or filing applications for employment. The fee shall not exceed the sum of one dollar (\$1), unless the salary or wages shall be more than three dollars (\$3) per day, in which

case a fee of not more than two dollars (\$2) may be charged. If the employee does not obtain employment within three days after the registration, the agency has to return the fee. You can readily see that no business, such as J.O.B.S., could operate without receiving some type of income. Senate Bill 248 authorizes the job listing service to exist within the confines of the rules and regulations, which are due to be drafted by the Secretary of Human Resources. The J.O.B.S. office determines what jobs are available in the local community by going directly to the employer and seeking that information. This information is then compiled on a computer which details the position available, type of training required and the particulars of that job or position. That list is then made available to a customer who wants to purchase the list, usually for somewhere between \$50.00 and \$80.00. The list is automatically updated each week for a period of thirty days, at no additional charge to the customer. A person who purchases the list and has a sincere desire to become employed has a thirty day opportunity to check all the employment opportunities in that particular area without paying an additional charge. Another important aspect which is available through J.O.B.S. is that all locations in the various states in which J.O.B.S. operates are connected by computer. If a particular industry, such as Cessna or Beech Aircraft in Wichita, lays off certain employees and those employees are not able to find employment in Wichita, similar job opportunities in other states where J.O.B.S. operates are placed on the list.

If any of the jobs listed are not available at the time the customer makes contact with the employer, each location

guarantees a refund to the customer. J.O.B.S. goes one step further by guaranteeing a refund to any purchaser who is not satisfied with the list, for any reason, within the thirty-day period. The reason for this guarantee is that Job Stores, Inc. has enjoyed a 90% success ratio--90% of the people purchasing the list have been able to obtain jobs in the categories set out in this testimony.

The reason that we are so careful to point out how J.O.B.S. operates is because of the incident in Wichita, which involved a company that moved into Wichita, took job listings out of the newspaper and other tabloids available in that area, typed them on a list and sold them to an unsuspecting consumer for a price. In many cases, when a job was already filled, the purchaser of the list made contact with another employer on this list for a job which did not suit the qualifications of that purchaser. For example, it would not be very beneficial for a career truck driver to seek employment as a keypunch operator when experience is required. All the jobs listed by Job Stores, Inc. detail the type of job available and the type of training necessary in order to qualify for that position.

I do not intend to say, and I want to make this point very clear, that Job Stores, Inc. does not offer job counseling and they are not in the business of advising individuals as to what jobs they should seek. However, as stated above, training qualifications necessary for a particular job are listed. The concept is simple. Job Stores, Inc. does the hunting and finding of the jobs and the customers do the choosing and selecting.

Once a franchise is purchased, the owner and manager, if different people, must go through the Initial Franchise Training,

held in Clear Water, Florida, J.O.B.S. headquarters location. All of the people in each location receive an Operations Manual, a document nearly 300 pages in length. They also get a set of workbooks. When the stores open, members of the Operations Department of the parent company are on hand to help set up the offices.

Job Stores, Inc. provides on-going training to each and every franchise owner/manager, including calling and shopping each and every store to maintain a level of quality assurance. Job Stores, Inc. has been and is in favor of regulation by the Secretary of Human Resources and will abide by any and all rules and regulations passed by the Secretary. It should be brought to the Committee's attention the safeguards which are built into this legislation and also those that exist in the laws of the state of Kansas presently. Another incident which happened in Wichita could not occur since the rules and regulations to be drafted by the Secretary of Human Resources will define how an employment listing service must operate; the present laws concerning consumer protection and anti-trust are available through the Attorney General's office and also through the various district attorney and county attorney offices in all 105 counties in the state of Kansas. It also should be noted that Job Stores, Inc. is a publically-offered company subject to the jurisdiction of Securities Exchange Commission and the Securities Commissioners in each state it operates.

Also, I would like to point out that the present Kansas law is patterned after the North Carolina law. The amendments being offered to change the law and provide job listing agencies in the state of Kansas is also the law of North Carolina. It

is my understanding that Jerry Powell, of the Department of Human Resources, has checked with North Carolina and found that the law is working quite well in that state and there have been no problems with the new legislation, which is very similar to that contained in Senate Bill 248.

Again, we would like to point out that if a person seriously desires to obtain employment and is willing to pay the fee to purchase the list, the experience has been that the employers where J.O.B.S. now operates have been very pleased with the job applicants. The employers have stated that if a person is serious about obtaining a job and is willing to pay the money to obtain the list of available jobs and make contact with the employer, then the employer feels this person is serious about wanting employment and will become a good employee.

We know that there are those who state that the Job Services Department of the Department of Human Resources is in business to provide employment opportunities for those seeking employment without charging a fee. However, additional opportunities that may be provided to those unemployed in the state of Kansas could certainly be nothing but a benefit with all the safeguards built in Senate Bill 248.

We hope you will vote favorably on Senate Bill 248. Thank you, again, for allowing us to appear today and offer testimony in support of this legislation.

Respectfully submitted,

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1st floor*

*Highway 101
101
101*

JANUARY 12, 1987

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Trends

Stop-and-shop jobs

Over the next ten years, the Labor Department predicts, 90% of new jobs created in the U.S. will be in the service sector—restaurants, fast-food chains, retail and grocery stores, etc. Small employment services have been popping up to handle such jobs, and now a new franchise chain, Florida-based J.O.B. Stores, has set up shop in 20 malls and plazas in nine states, including Florida, Pennsylvania, Oklahoma and Missouri and expects to have 60 more by the end of 1987. They list mostly blue-collar jobs, all paying less than \$25,000 a year. Unlike traditional employment agencies, the J.O.B. Stores charge employers nothing. Job seekers, for a one-time fee of \$75, get 90-day access to listings of local openings in a given field. If a job hunter is dissatisfied, the chain will refund the fee. Service companies, such as General Telephone, Kmart, Sears and T.J. Maxx, are using J.O.B. now. One manufacturer, General Motors, is considering the service to help some of its laid-off workers relocate to new jobs. While expanding quickly now, the new service may have trouble catching on in states like New York and Indiana, with tough employment agency regulations.



Service Jobs Grow

As a sign of the service industries' expansion, temporary and full-time employment agencies are increasingly steering workers to those fields.

Kelly Services, one of the nation's larger temporary-help companies, two years ago stepped up its light-industrial operations, through which it supplies employers with temporary food service, health care and factory workers. Kelly now offers light-industrial temporaries in almost all of its 650 U.S. offices.

Full-time job opportunities in the service sector are being handled by small employment services and at least one national franchise. Just Our Business Systems provides employment information for bartenders, truck drivers, retail salespeople and other service industry workers. The Florida-based franchise operates 24 offices in a dozen



JUST OUR BUSINESS SYSTEMS

Agency lists openings nationwide.

states and expects to open 60 more by the end of the year.

Unlike most employment services, J.O.B.S. lists only positions that pay less than \$25,000 a year and charges nothing to the employer. Job seekers pay \$75 for three months' access to its listings of local and national openings in their chosen field.

BUSINESS BRIEFING

DATE: February 25, 1987

FROM:
S & S Public Relations, Inc.
40 Skokie Boulevard, Ste. 430
Northbrook, IL 60062
Lynne Auerbach - 312/291-1616

FOR:
J.O.B.S.
2535 Landmark Dr., Suite 201
Clearwater, FL 33519

FOR IMMEDIATE RELEASE

J.O.B.S. LESSENS THE BURDEN
FOR UNEMPLOYED WORKERS

CLEARWATER, FL--While the U.S. races towards becoming a more service-oriented economy, businesses in search of semi-skilled workers increasingly are having difficulty finding help

A Clearwater, Florida franchise called J.O.B.S. is bridging the gap between employers in search of semi-skilled labor and workers trying to find jobs that pay less than \$25,000 a year.

While workers in this income category make up 90 percent of the labor force, this group of workers has traditionally been ignored by private employment search firms.

Compounding the problem is the fact that the workers, often on unemployment or welfare, are forced to rely on newspaper ads or government agencies to find jobs. They compete unsuccessfully with hundreds of applicants, often applying for a single job. Government programs have failed to serve employers in search of qualified applicants or job seekers.

A recent study by the General Accounting Office in Washington found that private employment firms were placing a significantly higher number of low-skilled workers in jobs than the federally funded State Employment Services (ES).

J.O.B.S., founded in January, 1982, by Robert Norins, solicits local employers daily and lists available jobs on its computer system. Applicants seeking positions paying under \$25,000 pay a \$75 fee and can use J.O.B.S.'s listings for up to three months.

Semi-skilled workers using the government-funded ES offices around the country remain unemployed in record numbers while employers are unable to find janitors or housekeepers.

"Ours is an aggressive effort to remember the forgotten men and women when it comes to job referral. Far nobler and more public-spirited than welfare and social services are services like ours that can give able-bodied men and women productive employment," according to Robert Norins, president.

Opening its doors in 1982, J.O.B.S. stores are linked by computer. For an additional fee, an applicant in one area can survey available positions in another area of the country on a daily basis. In addition, J.O.B.S. applicants do not compete with others seeking advertised jobs and they can conduct a systematic search for employment in much the same way as higher skilled workers and executives look for new positions.

Employers, who traditionally will not pay a search firm to find semi-skilled laborers, often have openings that remain unfilled for months. Through J.O.B.S., however, an employer can select from a large pool of qualified applicants without the expense of advertising. The service is free to employers.

J.O.B.S./LESSENS BURDEN FOR UNEMPLOYED
Page Three

"Eighty percent of our applicants find jobs within 48 hours," says Paul Elieff, director of franchising for J.O.B.S. "When an employer runs a newspaper ad, 200 people apply and have to be interviewed for one position. We are saving them time and money."

The U.S. Department of Labor predicts that in the next 10 years, nine out of 10 new jobs created will be in the service industry. Private employment agencies still cater to professional job seekers, a mere 10 percent of the labor force. And, according to recent press reports, ES is increasingly trying to place more higher paid, more skilled professionals too.

As our economy is fueled more and more with service businesses, the demand for more unskilled labor grows.

"Almost no one is trying to place these workers," says Norins, who worked in the development and management of shopping malls for 20 years. "Employees in the under \$25,000 a year jobs are always looking for better jobs. Our service will help them and help employers who are desperately trying to find qualified employees!"

#

DATE: February 25, 1987

FROM:
S & S Public Relations, Inc.
40 Skokie Boulevard, Ste. 430
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Lynne Auerbach - 312/291-1616

FOR:
J.O.B.S.
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Clearwater, FL 33519

FOR IMMEDIATE RELEASE

NEW SERVICE FOR SEMI-SKILLED WORKERS
BECOMES FAST-GROWING FRANCHISE

CLEARWATER, FL--J.O.B.S. -- Just Our Business Systems -- a Clearwater, Florida based franchise of employment services for semi-skilled workers, went public just two months ago and raised \$1.2 million in the first public offering.

In the past six months, J.O.B.S. has grown from 4 franchises to 22 and expects to double that in the next six months. Projections for the next five years are aimed at 500 stores nationwide.

Franchise opportunities are abundant across the country because J.O.B.S. caters to the largest segment of the U.S. labor force without any formidable competition. Unless you consider government-run employment services competition, J.O.B.S. is the only known national franchise currently finding positions for construction; labor, maintenance, cooks, etc., labor that makes less than \$25,000 with the exception of clerical search firms.

Workers earning less than \$25,000 are largely ignored by private search firms and government employment services. J.O.B.S. is the fastest growing franchise to meet the needs of lower salaried blue and white collar workers through job

-- more --

referral centers, daily soliciting local employers to locate available jobs.

Applicants pay a \$75 fee for a three month period and can use listings to find work. Employers who do not use traditional employment services to find semi-skilled workers, avoid the expense of running newspaper ads by listing their positions with J.O.B.S. Workers can choose those jobs for which they are best suited without competing with hundreds of applicants who apply for advertised positions.

The franchise was founded by Robert Norins in January, 1982. A single franchise costs a total \$30,000, including a \$19,500 franchise fee with 7 percent monthly royalties.

Norins, 43, spent more than 20 years in the development and management of shopping centers. While in that field, he noted that stores and other shopping mall employers continuously had difficulty finding suitable employees. Government services failed to fill jobs while private search firms only handled jobs paying salaries of \$20,000 or more.

"Those agencies generally charge the employer a fee, usually a percentage of annual salary. No employer is going to pay a fee to hire a floor sweeper. A floor sweeper can't afford to pay that kind of fee either, so they've traditionally had to find jobs on their own."

Each franchise is linked by computer, allowing job seekers in one city to scan prospects in other cities for an additional

fee. Norins and a small group of investors, including former football quarterback Joe Namath, own 51 percent of the company stock. Through J.O.B.S., unemployed workers can conduct a systematic job search in the same way an executive using a head hunter can survey the market and choose the most suitable position.

The U.S. is rapidly becoming a service economy, increasing the demand for more cooks, waiters, dishwashers, drivers and maintenance people. Employers are using the service and 80 percent of J.O.B.S. applicants find work within 48 hours, according to Paul Elieff, director of franchising.

#

Franchising: Business Services

Nation's Business[®]

MARCH 1987

By Bob Gatty

When David Caple moved to Naples, Fla., last year, the first thing he had to do was find a job.

Searching the newspaper, he spotted this ad: "Jobs for top dollar." So he called. It was the Naples franchise of Just Our Business Systems (J.O.B.S.), established two years ago to help blue-collar workers find jobs.

He went to the firm's office, paid a \$75 fee and received a list of phone numbers and contacts of companies looking for workers. Within a day he had a job as crew leader at Gater Landscaping, a firm with about 15 employees.

Gater's boss, Andrew Campbell, says the J.O.B.S. service saves him time and money. "If I put an ad in the paper, I get all the bums," he explains. "Forty million idiots show up, and I have to screen out the one or two good ones."

But the people at J.O.B.S. do the screening, and the service is free. "All I have to do is let them know what I need, and they have someone here in a day or two."

Robert Norins, president of J.O.B.S., began selling franchises in 1985. Today, there are 34 J.O.B.S. franchises in 13 states with commitments for another 21. The franchise fee is \$19,500, and Franchising Director Paul Elieff says up to \$15,000 more is needed for start-up costs.

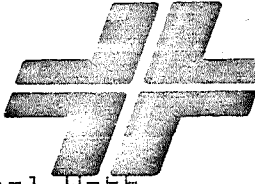
Andrew Campbell (center), owner of Gater Landscaping in Naples, Fla., supervises Joe Gentile (left) and Dave Caple, the two employees Campbell

hired from the J.O.B.S. employment agency. The franchise specializes in placing workers in blue collar jobs.



PHOTO THOMAS A. PRICE

MEDEVAC MIDAMERICA



(913) 233-2400

March 30, 1987

Darrel Webb
State Representative
Room 284
Kansas State Capitol
Topeka, Kansas 66612

Honorable Representative Webb,

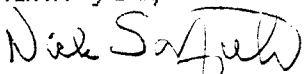
I apologize for my inability to be present for your committee meeting today, please accept this correspondence as my testimony on the issue of Workman's Compensation benefits as they relate to the exposure of prehospital Emergency Medical personnel to potential Hepatitis B infection.

It has been the experience of my company, Medevac MidAmerica, that in those instances when our personnel are exposed to possibly communicable diseases (our most recent experiences involve Hepatitis B) both the company and the employee are caught in a Catch-22 situation as far as insurance reimbursement for the medical fees incurred when precautionary inoculations are undertaken following a potential exposure to the disease. Our dilemma revolves around the fact that for the prehospital medical care personnel, exposure to a potentially infectious disease is not recognized by the Workman's Compensation carrier as a hazard of the job; thus, Workman's Comp. doesn't cover the cost of inoculating our personnel once they are exposed to a potentially infectious disease. Our primary health care insurer, Blue Cross and Blue Shield of Kansas, has denied reimbursement because the potential exposure to the disease occurred in the line of duty, thus their position is that it is the responsibility of Workman's Compensation. In the meantime, we are caught in the middle.

The series of inoculations required following a potential exposure to Hepatitis B are expensive, our most recent case is going to involve a total cost of \$600 to \$700. However, when compared to the potential cost of tens of thousands of dollars to care for a person who contracts the disease because the cost of inoculation is prohibitive, the cost of preventative care is a bargain.

The real heart of this issue revolves about the question: should exposure to potentially infectious disease be recognized by Workman's Compensation as a legitimate reason for precautionary inoculation of prehospital emergency medical care providers? I believe it should be.

Thank you,


Nick Scofield
Operations Manager

411 S. Jackson

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Topeka, Kansas 66603

Attachment #2
House Labor and Industry

March 31, 1987

M E M O

TO: Members of House Committee

FROM: Brandon L. Myers, Senior Legal Counsel
Kansas Commission on Civil Rights

SUBJECT: S. B. 351

DATE: March 30, 1987

S. B. 351 is the same as H. B. 2563. Attached for your information is our analytical memorandum regarding S. B. 351 which was provided to members of the Senate Labor, Industries and Small Business Committee. Also attached is a copy of amendments to S. B. 351 which we proposed and which we (and the Federal EEOC) believe must be amended into S. B. 351 in order to accomplish the Bill's purpose of substantially conforming the Federal and Kansas Age Discrimination in Employment Act. The Senate (and the Senate Labor, Industries and Small Business Committee) expressed no qualms with amending the Bill as proposed. They did not add the amendments, however, in order to avoid reprinting of the Bill which would have delayed its transmittal to the House. Senate Thiessen, Chairman of the Committee, suggested that having the amendments added in the House and then having the Senate concur with the House amendments, would be the most efficient process at this point. The amendments are crucial to accomplish the purposes introduced by this Bill.

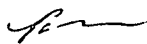
Hopefully, this will provide you with information which will aid in your consideration of S. B. 351, passage of which is supported by the KCCR.

BLM/mks
Enclosures
cc: Joanne E. Hurst, Executive Director

Attachment #3
House Labor and Industry
March 31, 1987

MEMORANDUM

TO: Senator Thiessen and Members of the Senate
Labor, Industries and Small Business Committee

FROM: Kansas Commission on Civil Rights 
by Brandon L. Myers, Senior Legal Counsel

RE: S.B. 351

DATE: March 17, 1987

Since the introduction of S.B. 351 (and H.B. 2563 which is identical to S.B. 351) and the delivery of our analytical memorandum dated March 6, 1987 regarding the bill, we have received several suggestions from the Federal Equal Employment Opportunity Commission (who administers the Federal Age Discrimination in Employment Act) for modification to the language proposed in the bill. With these changes EEOC staff indicates that the Kansas ADEA would be in substantial conformance with the Federal ADEA and would facilitate negotiations which in all likelihood would lead to a KCCR/EEOC worksharing agreement and the corollary increase of Federal funding to the KCCR as we have previously mentioned.

We also suggest some relatively minor wording changes to rectify some matters apparently inadvertently included in S.B. 351 as our proposed changes were placed in bill form and otherwise.

All these proposed changes to S.B. 351 are contained in the attachment hereto captioned "Amendments to S.B. 351." We would ask that S.B. 351 be amended in accordance therewith.

BLM/kp

SENATE BILL No. 351

By Committee on Federal and State Affairs

2-27

0017 AN ACT concerning the Kansas age discrimination in employ-
0018 ment act; extending coverage thereof; amending K.S.A. 44-
0019 1112, 44-1113 and 44-1118 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 44-1112 is hereby amended to read as fol-
0022 lows: 44-1112. As used in this act:

0023 (a) "Age" means an age of 40 or more years ~~but less than 70~~
0024 years.

0025 (b) "Commission" means the commission on civil rights
0026 created pursuant to K.S.A. 44-1003 and amendments thereto.

0027 (c) "Employee" does not include any individual employed
0028 by the individual's parents, spouse or child.

0029 (d) "Employer" means any person in this state who employs
0030 four or more persons and any person acting directly or indirectly
0031 for such a person, and includes the state and all political sub-
0032 divisions of the state.

0033 (e) "Employment agency" includes any person or govern-
0034 mental agency undertaking with or without compensation to
0035 procure opportunities to work, or to procure, recruit, refer or
0036 place employees.

0037 (f) "Firefighter" means an employee, the duties of whose
0038 position are primarily to perform work directly connected with
0039 the control and extinguishment of fires or the maintenance and
0040 use of firefighting apparatus and equipment, including an em-
0041 ployee engaged in this activity who is transferred to a supervi-
0042 sory or administrative position.

0043 (g) "Labor organization" includes any organization which
0044 exists for the purpose, in whole or in part, of collective bargain-
0045 ing or of dealing with employers concerning grievances, terms or

PROPOSED AMENDMENTS TO SB NO. 351

0046 conditions of employment, or of other mutual aid or protection in
0047 relation to employment.

0048 (h) "Law enforcement officer" means an employee, the
0049 duties of whose position are primarily the investigation, ap-
0050 prehension or detention of individuals suspected or convicted of
0051 offenses against the criminal laws of ~~the state~~ including an
0052 employee engaged in this activity who is transferred to a super-
0053 visory or administrative position. For the purposes of this sub-
0054 section, "detention" includes the duties of employees assigned
0055 to guard individuals incarcerated in any penal institution.

0056 (g) (i) "Person" means individual, partnership, association,
0057 organization, corporation, legal representative, trustee, trustee in
0058 bankruptcy or receiver.

0059 Sec. 2. K.S.A. 44-1113 is hereby amended to read as follows:
0060 44-1113. (a) It is an unlawful employment practice based on age
0061 to engage in any of the following acts in any manner which
0062 would limit, deprive or tend to deprive any person of employ-
0063 ment opportunities or otherwise adversely affect the person's
0064 status as an employee or applicant for employment:

0065 (1) For an employer, because of the age of a person, to refuse
0066 to hire or employ the person, to bar or discharge the person from
0067 employment or to otherwise discriminate against the person in
0068 compensation or in terms, conditions or privileges of employ-
0069 ment; to limit, segregate, separate, classify or make any distinc-
0070 tion in ~~regards~~ regard to employees because of age; ~~or to follow~~
0071 ~~any employment procedure or practice which, in fact, results in~~
0072 ~~discrimination, segregation or separation because of age without~~
0073 ~~a valid business motive.~~

0074 (2) For an employer to reduce the wage rate of any employee
0075 or otherwise alter the terms or conditions of any employee's
0076 employment in order to comply with this act, unless the reduc-
0077 tion is with the employee's express or implied consent. For an
0078 employer to follow any facially neutral employment procedure
0079 or practice which, in fact, results in discrimination, segregation
0080 or separation because of age unless the procedure or practice in
0081 question is validly justifiable by reason of business necessity.

0082 ~~(3)~~ For a labor organization, because of the age of a person, to

the

of Kansas or any municipality or political subdivision of the state of Kansas

without a valid business motive

For an employer to reduce the wage rate of any employee in order to comply with this act.

(3)

(4)

0083 exclude or to expel the person from its membership or to dis-
 0084 criminate in any way against any of its members or against any
 0085 employer or any person employed by an employer because of
 0086 age.

(5) 0087 (4) For any employer, employment agency or labor organiza-
 0088 tion to print or circulate or cause to be printed or circulated any
 0089 statement, advertisement or publication, or to use any form of
 0090 application for employment or membership or to make any
 0091 inquiry in connection with prospective employment or mem-
 0092 bership, which expresses, directly or indirectly, any limitation,
 0093 specification or discrimination as to age, or any intent to make
 0094 any such limitation, specification or discrimination.

(6) 0095 (5) For any employer, employment agency or labor organiza-
 0096 tion to discharge, expel or otherwise discriminate against any
 0097 person because the person has opposed any practices or acts
 0098 forbidden under this act or has filed a complaint, testified or
 0099 assisted in any proceeding under this act.

(7) 0100 (6) For an employment agency to refuse to list and properly
 0101 classify for employment or to refuse to refer any person for
 0102 employment or otherwise discriminate against any person be-
 0103 cause of age to comply with a request from an employer for a
 0104 referral of applicants for employment if the request expresses,
 0105 either directly or indirectly, any limitation, specification or dis-
 0106 crimination as to age.

(8) 0107 (7) For an employer, labor organization, employment agency
 0108 or school which provides, coordinates or controls apprentice-
 0109 ship, on-the-job or other training or retraining program, to main-
 0110 tain a practice of discrimination, segregation or separation be-
 0111 cause of age, in admission, hiring, assignments, upgrading,
 0112 transfers, promotion, layoff, dismissal, apprenticeship or other
 0113 training or retraining program, or in any other terms, conditions
 0114 or privileges of employment, membership, apprenticeship or
 0115 training; or to follow any policy or procedure which, in fact,
 0116 results in such practices without a valid business motive.

(9) 0117 (8) For any person, whether an employer or an employee or
 0118 not, to aid, abet, incite, compel or coerce the doing of any of the
 0119 acts forbidden under this act, or attempt to do so.

(10) For an employer, employment agency, labor organization or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits:

(A) In the case of a benefit plan, the cessation of an employee's benefit accrual or the reduction of the rate of an employee's benefit accrual, because of age; or

(B) in the case of a contribution plan, the cessation of allocations to an employee's account or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

However, nothing in this section shall be construed to prohibit an employer, employment agency or labor organization or any combination thereof from observing any provision of an employee pension benefit plan to the extent that such provision imposes, without regard to age, a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

0120 (b) It shall not be an unlawful employment practice to:

0121 (1) ~~Fill vacancies in such way as to eliminate or reduce~~
0122 ~~imbalance with respect to age;~~

Take

0123 ~~(2) take~~ any action on the basis of age, which is otherwise
0124 prohibited under subsection (a), if age is a bona fide occupational
0125 qualification necessary to the normal operation of the particular
0126 business or if the differentiation is based on necessary factors
0127 other than age;

(2)

0128 ~~(3)~~ observe the terms of a bona fide seniority system or any
0129 bona fide employee benefit plan, such as a retirement, pension
0130 or insurance plan, which is not a subterfuge to evade the pur-
0131 poses of article 10 of chapter 44 of Kansas Statutes Annotated,
0132 except that no such employee benefit plan shall excuse the
0133 failure to hire any individual *and no such seniority system or*
0134 *employee benefit plan shall require or permit the involuntary*
0135 *retirement of any individual;*

0136 (4) observe a mandatory retirement age of 70 years or above
0137 or minimum age of employment; or

0138 (5) observe the provisions of a retirement, pension or other
0139 benefit plan permitted by state or federal law or by ordinance or
0140 resolution

(3)

0141 ~~(4)~~ Before January 1, 1994, for this state or any political
0142 subdivision of this state, or any agency or instrumentality
0143 thereof, or any interstate agency, to fail or refuse to hire or to
0144 discharge any individual because of such individual's age if
0145 such action is taken:

0146 (A) With respect to the employment of an individual as a
0147 firefighter or as a law enforcement officer and the individual
0148 has attained the age of hiring or retirement in effect under
0149 applicable state or local law on March 3, 1983, and

0150 (B) pursuant to a bona fide hiring or retirement plan that is
0151 not a subterfuge to evade the purpose of this act.

0152 Sec. 3. K.S.A. 44-1118 is hereby amended to read as follows:
0153 44-1118. (a) The provisions of this act shall be construed liberally
0154 for the accomplishment of its purposes.

0155 (b) Nothing in this act shall be construed to mean that an
0156 employer shall be forced to hire unqualified or incompetent

0157 personnel, or discharge qualified or competent personnel.

0158 (c) Nothing in this act shall be construed to prohibit com-
0159 pulsory retirement of any employee who has attained 65 years of
0160 age and who, for the two-year period immediately before re-
0161 tirement, is employed in a bona fide executive or a high poli-
0162 cymaking position, if such employee is entitled to an immediate
0163 nonforfeitable annual retirement benefit from a pension,
0164 profit-sharing, savings or deferred compensation plan, or any
0165 combination of such plans, of the employer of such employee,
0166 which equals, in the aggregate, at least \$44,000.

0167 (d) Nothing in this act shall be construed to prohibit, before
0168 January 1, 1994, compulsory retirement of any employee who
0169 has attained ~~65~~ years of age ~~but not 70 years of age~~ and who is
0170 serving under a contract of unlimited tenure (or similar ar-
0171 rangement providing for unlimited tenure) at an institution of
0172 higher education.

0173 New Sec. 4. (a) This act and the amendments made by this
0174 act shall take effect on ~~July 1, 1987~~, except that, with respect to
0175 any employee who is subject to a collective bargaining agree-
0176 ment, such amendments shall not apply until the termination of
0177 such collective bargaining agreement or January 1, 1990, which-
0178 ever occurs first, if such collective bargaining agreement:

0179 (1) Is in effect ~~on June 30, 1987~~;

0180 (2) terminates after ~~July 1, 1987~~;

0181 (3) has any provision which was entered into by a labor
0182 organization (as defined by section 6(d)(4) of the Fair Labor
0183 Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

0184 (4) contains any provision that would be superseded by such
0185 amendments, but for the operation of this section.

0186 (b) This section shall be a part of and supplemental to the
0187 Kansas age discrimination in employment act.

0188 Sec. 5. K.S.A. 44-1112, 44-1113 and 44-1118 are hereby re-
0189 pealed.

0190 Sec. 6. This act shall take effect and be in force from and
0191 after its publication in the ~~statute book~~.

70

the effective date of this act

prior to the effective date of this act

the effective date of this act

Kansas register

MEMORANDUM

FROM: Brandon L. Myers, Senior Legal Counsel
Kansas Commission on Civil Rights

RE: S. B. 351

DATE: March 6, 1987



Attached hereto for your convenience in evaluating the above bill are copies of the following:

1. My February 4, 1987 Memorandum to Senator Gene Anderson generally outlining the purposes and effect of the proposed changes to the KADEA which are now encompassed in S.B. 351;
2. March 4, 1987 analytical letter from Joanne E. Hurst, Executive Director of the KCCR, to Gary L. Stotts, Acting Director, Division of Budget, outlining ramifications of adopting S.B. 351;
3. Copy of House Appropriations Subcommittee Report and Recommendation (See in particular Recommendation 3. addressing proposed KADEA changes);
4. Copy of September 12, 1983 Federal Equal Employment Opportunity Commission Legal Services Memorandum outlining points on which the KADEA "deviates" from the ADEA, and recommending against an EEOC/KADEA age discrimination worksharing contract;
5. September 14, 1983 letter from EEOC to KCCR indicating EEOC's legal counsel's advice;
6. February 4, 1987 letter to EEOC from KCCR requesting EEOC's position as to proposed KADEA now pending in S.B. 351.

The above materials provide some background information to show why S.B. 351 has been proposed.

Following is basically a line-by-line synopsis of the changes proposed to the KADEA in S.B. 351. Because much of the language proposed in S.B. 351 is taken directly from the Federal ADEA (and the 1986 amendments thereto) we are providing, where appropriate, quotes from CCH "Labor Law Reports", Issue No. 1557, Report 287, December 4, 1986, Part 2, which outlines "Legislative Notes" giving the rationale as to the comparable changes in the Federal law. The above-cited publication summarizes the Federal ADEA amendments of 1986 (which S.B. 351 essentially attempts to interpolate into Kansas law) as follows:

New Maximum Age Benefit Rules

Job protection and employee benefit security for older workers have been extended and expanded by recent enactments by Congress. The new rules affect employers, labor unions, employment agencies, and employee benefit plan administrators. They are contained in amendments to the Age Discrimination in Employment Act of 1967 (ADEA), the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code of 1986 (IRC).

(B) 4 members who shall be teachers or retired teachers at institutions of higher education (who do not serve in an administrative capacity at such institutions), selected by the National Academy of Sciences after consultation with the American Federation of Teachers, the National Education Association, the American Association of University Professors, and the American Association of Retired Persons; and

(C) one member selected by the National Academy of Sciences.

(3) The results of the study shall be reported, with recommendations, to the President and to the Congress not later than 5 years after the date of enactment of this Act.

(4) The expenses of the study required by this subsection shall be paid from funds available to the Equal Employment Opportunity Commission.

Federal Rationale: (See CCH, supra, summary, and CCH, supra, p. 33-34)

LEGISLATIVE NOTES

Rep. Jeffords.--This temporary exemption recognizes the special demographic problems of institutions of higher education, who took on additional faculty during the years when "baby boomers" were of college age. Most faculty openings occur only upon death or retirement of faculty members. Therefore, if mandatory retirement were immediately eliminated for college faculty, the continued employment of these faculty members hired during a time of expanding enrollments might result in a shortage of openings for new college faculty members. Opportunities for new professors and researchers with new ideas and new ways of thinking, and skilled in emerging disciplines, might be scarce. Continuation of present mandatory policies for a temporary period of time will help alleviate these pressures. In addition, the 7-year exemption will give institutions of higher learning the opportunity to reexamine the tenure system and to determine, in light of the elimination of mandatory retirement, whether structural changes might be appropriate or whether incentives should be offered for early retirement. (Cong. Record, H. 11283, Oct. 17, 1986.)

Rep. Hawkins.--We have provided 7-year transition periods to allow tenured faculty and police and firefighters time to adjust to the requirements of this new law. During this time, studies are to be completed which will assess the impact of eliminating mandatory retirement of universities and law enforcement institutions. We are confident that these institutions will ultimately benefit from the requirement that they begin basing hiring and retirement decisions on an individual's qualifications and job performance. (Cong. Record, Page H. 11281, October 17, 1986.)

Similar to the police/fire exemption, once the Federal government has considered the studies, Kansas can draw thereon and determine if KADEA modification is appropriate. NOTE: For clarity perhaps a similar repeal provision should be added to S.B. 451.

S.B. 351 changes at lines 0173-0187:

0173 New Sec. 4 (a) This act and the amendments made by this
0174 act shall take effect on July 1, 1987, except that, with respect to
0175 any employee who is subject to a collective bargaining agree-
0176 ment, such amendments shall not apply until the termination of
0177 such collective bargaining agreement or January 1, 1990, which-
0178 ever occurs first, if such collective bargaining agreement:
0179 (1) Is in effect on June 30, 1987;
0180 (2) terminates after July 1, 1987;
0181 (3) has any provision which was entered into by a labor
0182 organization (as defined by section 6(d)(4) of the Fair Labor
0183 Standards Act of 1938 (29 U.S.C. 206(d)(4)); and
0184 (4) contains any provision that would be superseded by such
0185 amendments, but for the operation of this section.
0186 (b) This section shall be a part of and supplemental to the
0187 Kansas age discrimination in employment act.

Comparable Federal ADEA section:

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

- (1) which is in effect on June 30, 1986,
- (2) which terminates after January 1, 1987,
- (3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and
- (4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

(b) EFFECT ON EXISTING CAUSES OF ACTION.—The amendments made by sections 3 and 4 of this Act shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 as in effect before January 1, 1987.

We wrote dates into lines 0179-0180 keyed to the effective date of the KADEA amendments being July 1, 1987. However, please note that when S.B. 351 was printed a "Sec. 6" (lines 0190-0191) was added saying the act could be in force from publication in the statute book. We recommend that this be changed to July 1, 1987 to be consistent with the rest of the bill.

We did not add a section as to effect upon pending claims because the general rule under Kansas law is that the laws operate only prospectively, unless specifically enacted with retrospective provisions when passed by the legislature.

BLM/kp

MEMO

TO: Senator Gene Anderson
FROM: Brandon L. Myers *Y*
RE: Proposed Amendment of the Kansas Age
Discrimination in Employment Act
DATE: February 4, 1987

Here is a copy of the proposed bill we discussed. It is intended to bring the KADEA into line with the Federal ADEA which is administered by EEOC. EEOC has refused to enter into a worksharing agreement with KCCR as to age discrimination complaints because of this dissimilarities between the two acts ever since the KADEA was adopted in 1983. (See attached correspondence from EEOC.) Thus, although KCCR investigates age discrimination complaints (which the Complainants file with both KCCR and EEOC), because of the lack of worksharing agreement, EEOC gives KCCR no case credit or payment. If the KADEA is amended EEOC will undoubtedly be willing to give us an age contract. This could amount to perhaps \$40,000.00 - \$50,000.00 more to KCCR from EEOC per year for investigative activities KCCR is already performing and will continue to perform.

In addition to that the Federal ADEA was amended in 1986 and the age 70 limit was removed. It is sensible that the KADEA be the same.

In short the proposed amendments are intended to make the coverage of the KADEA comparable to the Federal ADEA. Most Kansas employers (basically, any employer employing 20 or more employees) are already covered by the Federal Age Discrimination act (the KADEA covers those employing four (4) or more persons). Thus, the only effect of the KADEA changes would be as to employers in Kansas employing between 4 and 19 employees. Those with less than four are not, and still would not be, covered. Those with 20 or more are already covered in this manner by the Federal Age Discrimination Act.

Please contact me for any further information that you wish to have, and let us know if you want to introduce this as a bill.

BLM/kp
cc: Joanne E. Hurst
Roger W. Lovett

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COMMISSION ON CIVIL RIGHTS

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FIELD SUPERVISORNORMA JEAN HODISON
OFFICE MANAGER

March 4, 1987

Gary L. Stotts, Acting Director
Division of Budget
Department of Administration
Room 152-E
State Capitol Building
Topeka, KS 66603-1575

RE: Fiscal Note on S.B.351

Dear Mr. Stotts:

On March 2, 1987, you requested a fiscal note on Senate Bill 351. The information you requested is as follows:

1. Brief Analysis of the proposed legislation. Senate Bill 351 is intended to bring the Kansas Age Discrimination in Employment Act (KADEA) administered by our agency, in line with the Federal Age Discrimination in Employment Act (ADEA), which is administered by EEOC. Our agency currently has a worksharing agreement and contracts with EEOC on complaints dual-filed under the provisions of Title VII and the Kansas Act Against Discrimination with regard to race, color, religion, sex, and national origin. This contract normally produces revenues of approximately \$270,000 to \$280,000 annually. However, because of the dissimilarities between KADEA and the Federal ADEA, EEOC has refused to enter into a contract or worksharing agreement with our agency on age discrimination complaints. Thus, although, our agency has investigated age discrimination complaints since July of 1983, when KADEA became effective, EEOC gives no credit or payment for the cases. If KADEA is amended, EEOC will undoubtedly be willing to enter into a contract with this agency on age discrimination complaints, which could produce additional revenues of perhaps \$40,000 to \$50,000 per year, for investigative activities our agency is already performing without pay - and will continue to perform.

Gary L. Stotts, Acting Director
Division of Budget
Department of Administration
Room 152-E
State Capitol Building
Topeka, KS 66603-1575
Page 2

Also, in 1986, the Federal ADEA was amended to remove the age 70 limit. Therefore, it is also appropriate to remove that limit imposed by the current provisions of KADEA.

In short, the proposed amendments are intended to make the coverage of the KADEA comparable to the Federal ADEA. Most Kansas employers (basically, any employer employing 20 or more employees) are already covered by the Federal age act, while the Kansas age act already covers those employing four (4) or more persons. Thus, the effect of the proposed amendments would only be on employers in Kansas employing between 4 and 19 employees. Those with less than four are not, and still would not be covered. Those with 20 or more employees are already covered in this manner by the Federal Act.

2. How the bill would affect our area of responsibility. The Commission currently has the responsibility of enforcing the KADEA, and has maintained that responsibility since it was enacted in 1983. The amendments proposed in S.B. 351 would expand our responsibility by providing coverage for persons of age 70 and above. The Commission, in the past three years, has had several contacts from persons over 70 wishing to file complaints. However, these contacts were minimal and would probably have resulted in no more than 10 complaints per year. However, if the age limit of 70 is removed and citizens become aware of their ability to pursue such complaints, there probably would be some increase in such complaints. However, it is not possible to accurately predict the degree of increase. The agency feels that the increased area of responsibility is minimal, and the probable increase in the number of complaints filed annually would not be significant enough to require an increase in staff or operating expenses above current level.

The agency should be able to handle the increased responsibility with the current staff level of 41 FTE positions.

3. The dollar effect upon agency budget. Proceeding upon the assumption that the agency will be able to enter into a contract with EEOC on age complaints, because the amendments in S.B.351 make the State law comparable with Federal law, the agency could expect a significant increase in revenues from such a contract. We anticipate that a contract on age complaints would be comparable to our

Gary L. Stott Acting Director
Division of Budget
Department of Administration
Room 152-E
State Capitol Building
Topeka, KS 66603-1575
Page 3

current contract with EEOC on Title VII complaints, and pay the agency \$400.00 per complaint that is dual-filed with both agencies, and investigated by our agency. In the past three (3) fiscal years our agency received an average of 110 age complaints per year. Based upon this information, we predict that an age contract would provide additional revenues of \$40,000 to \$50,000 dollars per year. Since the agency predicts that we will be able to handle the increased responsibility with the current level of staffing and operating expenses, the additional revenues will act to reduce the amount of State General revenue funds necessary to operate the agency. However, a note of caution is appropriate. At this point we are only able to operate upon informed assumptions. If the amendments in S.B. 351 are adopted, the final version of the law must be submitted to EEOC for a procedural analysis, and a request for an age contract. If the law is declared comparable, and if EEOC decides to enter into a contract, the earliest this would come about, would be the beginning of the new federal fiscal year on October 1, 1987. Then, revenues from this contract would probably not actually be received until January or February 1988. Therefore, relying upon these revenues as absolutes to finance agency staffing and operations for Fiscal Year 1988, is not recommended.

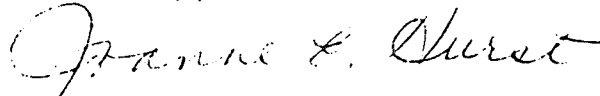
4. The premise upon which you have based cost estimates and anticipated revenues. As previously discussed in item three (3), estimates of costs and revenues are based upon our actual records of number of age complaints filed in the past, and our recent discussions and correspondence with representatives of EEOC on an anticipated contract.
5. Whether the provisions of the bill could be implemented and carried out by approved staffing and operating expenditure levels. As previously discussed in items two (2) and three (3), the increased responsibility of S.B. 351 would not be significant enough to require an increase above current staffing (41 FTE) and operating expenses.

Gary L. Stott, Acting Director
Division of Budget
Department of Administration
Room 152-E
State Capitol Building
Topeka, KS 66603-1575
Page 4

6. Long-range fiscal effect. Based upon recent discussions with EEOC, an age contract is very probable if Kansas law becomes comparable with Federal law. Based upon past record of such complaints, and current level of payment for such cases we could predict \$40,000 to \$50,000 dollars annually in the foreseeable future. All these future revenues, however, are based upon EEOC's level of funding each year from the federal government.

If you need any additional information, or clarifications, please do not hesitate to contact me.

Sincerely,



Joanne E. Hurst
Executive Director

JEH/ms

SUBCOMMITTEE REPORT

Agency: Commission on Civil Rights

Bill No. 2395

Bill Sec. 3

Analyst: Mills

Analysis Pg. No. 223

Budget Pg. No. 1-87

<u>Expenditure Summary</u>	<u>Agency Req. FY 87</u>	<u>Governor's Rec. FY 87</u>	<u>Subcommittee Adjustments</u>
State Operations:			
State General Fund	\$ 720,008	\$ 691,896	\$ --
Special Revenue Funds	583,827	598,827	--
TOTAL	<u>\$ 1,303,835</u>	<u>\$ 1,290,723</u>	<u>\$ --</u>
FTE Positions	41.0	41.0	--

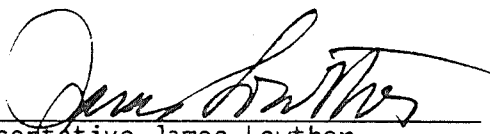
Agency Request/Governor's Recommendation

FY 1987. The 1986 Legislature approved an FY 1987 operating budget of \$1,303,835 for the Commission, composed of \$720,008 from the State General Fund and \$583,827 from federal funds. The Commission's FY 1987 estimate is the same as the approved budget level. The budget provides funding for 41.0 FTE positions, a reduction of 1.7 FTE from FY 1986.

The Governor recommends expenditures of \$1,290,723 in FY 1987, an amount which is \$13,112 less than the agency estimate. The reductions are found in contractual services (\$25,663) and commodities (\$500), with an offsetting increase in salaries and wages (\$13,051). The Governor recommends expenditure of an additional \$15,000 in federal funds over the agency estimate of \$583,827. The amount of \$28,112 was lapsed by 1987 H.B. 2049 from the General Fund appropriation for this agency.

House Subcommittee Recommendation

The House Subcommittee concurs with the Governor's recommendation for FY 1987.


 Representative James Lowther
 Chairman


 Representative Kenneth King


 Representative John Solbach

SUBCOMMITTEE REPORT

Agency: Commission on Civil Rights

Bill No. 2272

Bill Sec. 2

Analyst: Mills

Analysis Pg. No. 223

Budget Pg. No. 1-87

<u>Expenditure Summary</u>	<u>Agency Req. FY 88</u>	<u>Governor,s Rec. FY 88</u>	<u>Subcommittee Adjustments</u>
State Operations:			
State General Fund	\$ 1,129,094	\$ 868,255	\$ (22,308)
Special Revenue Funds	335,178	424,274	--
TOTAL	<u>\$ 1,464,272</u>	<u>\$ 1,292,529</u>	<u>\$ (22,308)</u>
 FTE Positions	 44.0	 39.5	 1.5

Agency Request/Governor,s Recommendation

FY 1988. The agency request for FY 1988 totals \$1,464,272, for the salaries of 44.0 FTE positions and associated expenditures. The total is composed of \$1,129,094 from the State General Fund and \$335,178 from federal funds. The agency requests three new positions, a Secretary I, a Secretary II, and a Civil Rights Investigator I, and includes funding of \$59,247, including benefits, for the new positions.

The Governor recommends expenditure of \$1,292,529 in FY 1988, a reduction of \$171,743 from the agency request of \$1,464,272. The reductions are found in salaries and wages (\$100,032), contractual services (\$50,839), commodities (\$2,600), and capital outlay (\$18,272). The Governor recommends expenditures of \$868,255 from the State General Fund and \$424,274 in federal funds in FY 1988. The Governor does not recommend addition of the requested three new positions. The Governor,s recommendation reduces the agency,s position limitation from 41.0 to 39.5 by deleting one Civil Rights Investigator I position and by reducing one Civil Rights Intake Worker position to half-time.

House Subcommittee Recommendation

The House Subcommittee concurs with the Governor,s recommendation, with the following exceptions:

1. Restoration of the Civil Rights Investigator I position deleted by the Governor, but deletion of the funding for one Civil Rights Investigator I position and a reduction of \$22,308 from the State General Fund appropriation for the agency. The rationale for this recommendation is discussed in item 3 below.
2. Restoration of a 0.5 FTE Civil Rights Intake Worker which was reduced by the Governor,s recommendation from full-time to half-time status. However, no additional funding is recommended for

this position. The rationale for this recommendation is discussed in item 3 below.

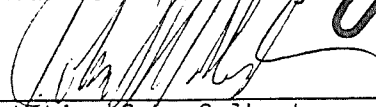
3. The House Subcommittee notes that, while total expenditures for the Commission have remained fairly stable in recent years, the portion of that funding attributable to the State General Fund will increase by \$176,359 in FY 1988 under the Governor's recommendation. Funding attributable to federal funds will decrease by \$174,553 under the Governor's recommendations for FY 1987 and FY 1988. As a result of increased expenditure of federal funds in FY 1987 and FY 1988, the ending balance on federal funds at the end of FY 1988 is projected to be \$4,698. The House Subcommittee was advised that the Commission may be able to secure additional federal funding to investigate age discrimination cases for the Equal Employment Opportunity Commission (EEOC); such additional funding could approximate \$45,000 in FY 1988. The House Subcommittee encourages the Commission to seek enhanced federal funding to offset the increased demand on the State General Fund and recommends restoration of the Civil Rights Intake Worker discussed in item 2 above on the basis that the position be funded from the additional federal funds, as well as one Investigator position.
4. Adjustment of the agency's position limitation to reflect the recommended 40.0 FTE positions.
5. The Commission is requesting legislation to amend the Kansas law relating to age discrimination so that the Kansas law may be determined equivalent to federal law in this area. Such an equivalency determination would allow the Commission to contract with EEOC to investigate age discrimination complaints. The House Subcommittee recommends the introduction of the requested legislation.



Representative James Lowther
Chairman



Representative Kenneth King



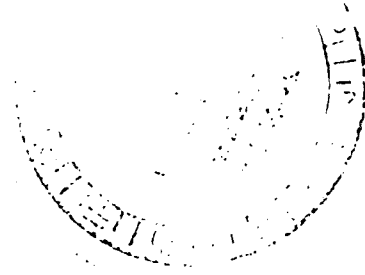
Representative John Solbach



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WASHINGTON, D.C. 20506

September 14, 1983



Brandon
Please review

Mr. Michael L. Bailey, Executive Director
Kansas Commission on Civil Rights
535 Kansas Avenue, Fifth Floor
Topeka, Kansas 66603

Dear Mr. Bailey:

This is in response to your letter of June 13, 1983, requesting review of the Kansas Statute (House Bill No. 2523) conferring Age Discrimination in Employment responsibility upon your agency.

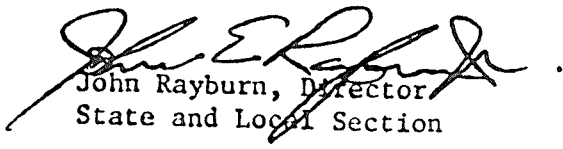
I am appending a copy of the results of the review of this statute by our Office of Legal Counsel.

The Legal Counsel's memorandum finds that Kansas is a referral state within the meaning of Section 14(b) of the ADEA, but recommends that ADEA Charge Processing contracts be denied, pending clarification of a number of differences between your statute and the Federal ADEA.

As we previously discussed, it is possible that the regulations your agency will adopt for administration of your statute, can cure some of the critical differences, since many of Legal Counsel's reservations go to procedural or interpretative matters within most administrative agencies' purview for regulatory interpretation. Others of these reservations might well be cured or ameliorated by Attorney General rulings or interpretations. It is, of course, possible, that certain areas of incompatibility are statutory, and our ability to contract with you as to some charges would not be possible without statutory amendment.

We certainly will be happy to review your regulations, when they issue, and to refer any Attorney General interpretations or rulings which might have a bearing upon your ability to contract with us, to our Legal Counsel.

Sincerely,


John Rayburn, Director
State and Local Section

cc: Whit Walker, Region II
Ed Mansfield, Director
St. Louis District Office



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20508

SEP 12 1983

MEMORANDUM TO: John E. Rayburn, Director
State and Local Section
Office of Program Operations

THRU : Odessa M. Shannon, Director
Office of Program Operations

FROM : Nestor Cruz *NC*
Associate Legal Counsel
Legal Services

SUBJECT : Review of Age Discrimination Statute of
the State of Kansas for the Purpose of
Determining Referral Status

This is in response to your inquiry concerning recently enacted age discrimination legislation in the state of Kansas, and the request of the Kansas Commission on Civil Rights (KCCR) that it be considered for an ADEA contract. We have reviewed your request and recommend that consideration of the KCCR as an agency with which the Commission may contract for the processing of age charges be denied at this time.

Section 14(b) of the federal ADEA requires that charging parties obtain recourse to applicable state as well as federal law before commencing a private action under the federal age discrimination law in any state that has an age discrimination law and a state agency authorized to grant or seek relief from age discrimination. The Kansas statute in question contains substantive prohibitions similar to those contained in the federal ADEA and there is a state agency authorized to accept complaints and seek relief on behalf of aggrieved individuals. It therefore appears that Kansas is a referral state within the meaning of section 14(b). Certain sections of the Kansas statute do not comport with the federal statute, however, and would therefore preclude the state agency from processing age charges in a manner which would qualify for payment under current age contracting procedures.

For example, Section 3(a)(1) of the Kansas statute appears to permit actions otherwise age discriminatory where the employer acts under a valid business motive. The Commission recognizes a similar defense under the federal ADEA, but places a higher burden on the employer. See 29 C.F.R. §1625.7(d) (adverse impact on protected group only justified by business necessity).

The distinction may result in the KCCR treating disparate impact claims differently.

Similarly, Section 3(a)(2) provides a defense not available to employers under the federal statute. This section permits an employer to reduce the wage rate of any employee in order to comply with the Kansas statute, provided the reduction is with the employee's express or implied consent. This section presents the clear possibility that a claim involving a wage reduction would not appear to violate the state law but would the federal law.

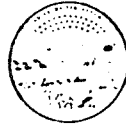
We would also note that Section 8(b)(1) does not have any counterpart in the federal statute and appears to permit employers to make hiring decisions on the basis of age depending upon the age profile of his workforce. Such a practice would be a clear violation of the federal statute unless the employer could show that the exclusion was a bona fide occupational qualification (BFOQ). In Section 8(b)(1) the Kansas statute provides the defense of workforce imbalance alone, as the following Section 8(b)(2) provides a BFOQ test. We would conclude therefore that there might be a range of hiring charges that would be dismissed under the state law but would be considered potential violations under the federal law.

Further, Section 8(b)(3) provides a defense for "a bona fide seniority system or any bona fide employee benefit plan" which is almost identical to the exception contained in section 4(f)(2) of the federal statute prior to the 1978 Amendments thus leaving open the question of whether involuntary retirement pursuant to the terms of a pension plan is permissible under the Kansas statute where it clearly is not under federal law.

Finally, we note a substantial deviation from the federal ADEA in the defense available to public employers under Section 8(b)(5) of the state law which makes it not unlawful for an employer to "observe the provisions of a retirement, pension or other benefit plan permitted by state or federal law or by ordinance or resolution." This section provides state and local governments a broad exemption to engage in otherwise unlawful practices with respect to their own employees, and is superfluous with respect to federal law which is preemptive in any case. As you may know, the Commission has noted that there exists a number of state and local laws that do not comport with the federal ADEA and that these laws are considered effectively superseded by the federal law. See 29 C.F.R. §1625.6(c). Section 8(b)(95) of the Kansas statute appears to be such a law in that it permits local governments to pass laws that permit public employers to observe the terms of benefit plans that may have arbitrary age distinctions.

We have noted those areas where the Kansas statute deviates from the federal ADEA. In general, however, the state statute appears to fit within the 14(b) definition of a referral state. It does not appear that, absent amendments to the Kansas

law or substantive regulations issued thereunder which would effectively eliminate the defects outlined above, that the KCCR will be able to meet the Commission's requirements for the processing of age charges under contract.



COMMISSION ON CIVIL RIGHTS
 214 SOUTHWEST SIXTH AVENUE - 15TH FLOOR
 LIBERTY BUILDING
 TOPEKA, KANSAS 66603-1280

PHONE (913) 238-1280
 February 4, 1987

JOANNE E. HURST
 EXECUTIVE DIRECTOR

ROBERT G. LAY
 ASSISTANT DIRECTOR

ROGER W. LOVETT
 CHIEF LEGAL COUNSEL

BRANTON E. MYERS
 CHIEF ATTORNEY

ARTHUR H. BRUCE
 CHIEF OF COMPLAINTS

WILLIAM J. MINNER
 CHIEF INVESTIGATOR

THOMAS J. HODGSON
 CHIEF MANAGER

Lynn Bruner
 District Office Director
 U. S. Equal Employment Opportunity Commission
 625 Euclid
 St. Louis, MO 63108

Dear Ms. Bruner:

As you are aware, the Kansas Commission on Civil Rights and E.E.O.C. have been unable to enter into a worksharing agreement with regard to age discrimination due to EEOC's view that the Kansas Age Discrimination in Employment Act is not sufficiently similar to the Federal ADEA to justify entering into such an agreement (see attached copies of correspondence from EEOC on point). This has caused problems for both agencies. K.C.C.R. has formally requested that E.E.O.C. enter into an age agreement with us. There has been considerable discussion between representatives of our agency with Bob Cignetti and other EEOC personnel. However, no age contract has yet been instituted.

The Kansas Legislature is currently in session. Even though KCCR does not fully agree with EEOC's analysis of our Age Act, we are willing to make efforts to amend our statute so that it is in all respects precisely comparable to the Federal A.D.E.A. Obviously, due to the recent amendments to the Federal Act (removal of the 70 age limit), at least some amendment to our Act are justifiable this Legislative Session even if we were not to make an effort to address the previous concerns of EEOC which stand in the way of effectuating a contract. Therefore, we have drawn a proposed bill (copy enclosed) to be introduced in this session of the Kansas Legislature to amend the KADEA. It is necessary that we have it introduced within the very near future to facilitate its passage this session.

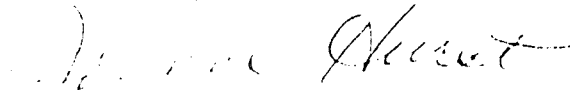
Lynn Bruner
Page 2
February 4, 1987

We are requesting that EEOC review this proposed bill and give us a written indication of its opinion as whether the bill, if passed, would eliminate the points of difference between the ADEA/KADEA. Also, we need some indication from EEOC as to the likelihood that it will enter into an age contract with us if this bill passes. Simply put, we would like to be able to show the legislature that if the proposed amendments become law, EEOC will enter into an age contract.

Bob Cignetti has indicated that there is some enthusiasm for such a contract, if one can be effectuated. Would you, or some other representative of EEOC, be willing to appear and testify in favor of the bill before a Kansas Legislative Committee? If so, we could encourage that and it would undoubtedly be most helpful to passage of the bill.

Your prompt attention to this would be greatly appreciated.

Sincerely,



Joanne P. Hurst

JEB/BM:kp
Enclosures

TESTIMONY ON H.B. 2563
TO
HOUSE LABOR AND INDUSTRY COMMITTEE
BY
KANSAS DEPARTMENT ON AGING
MARCH 31, 1987

Bill Summary:

Act would prohibit discrimination in employment for persons over age 40.

Bill Brief:

1. Act amends Kansas statutes to incorporate recent federal law that removes upper age limit of 70 years thereby prohibiting discrimination in employment for persons over age 40.
2. Act excludes firefighters and law enforcement officers from protection until January 1, 1994.
3. Act excludes tenured faculty between the ages of 65 and 70 from protection until January 1, 1994.
4. Act excludes employees 65 and over who have been employed as a bona fide executive or in a high policymaking position, from protection, if the employee's retirement benefit is at least \$44,000.
5. Act excludes employees covered by collective bargaining agreements in effect on June 30, 1987, from protection, until January 1, 1990 or the termination of the agreement, whichever occurs first.

Bill Testimony:

This bill would amend Kansas law to conform to recent federal legislation lifting the upper age limit of 70 years from the statute protecting older workers from age discrimination.

The Kansas Department on Aging endorses this bill and applauds its recognition of the skills, talents and dedication of older workers.

We would remind the Committee however, that the bill's effectiveness depends on strong enforcement by the Kansas Commission of Civil Rights. Despite the attention given statutorily in the last decade to the existence of age discrimination, a recent survey done at the University of Kansas found that 66% of Kansas leaders still think that older workers are discriminated against in the work place. The effect of age discrimination on the individual can be devastating financially. In addition, it results in the loss of dignity, responsibility and purpose. For this reason. KDOA urges the Committee to continue to push for strict enforcement of this statute.

Recommended Action:

KDOA supports the enactment of H.B. 2563.

Attachment #4
House Labor and Industry
March 31, 1987

MD:mj
3/17/87

March 12, 1987

Committee on Federal and State Affairs
Room 527 South
State Capitol Building
Topeka, Kansas

SUBJECT: Senate Bill 351

Please add my endorsement to Senate Bill 351 which would eliminate the mandatory retirement age of 70 for employees in the state of Kansas and thus emphasize federal regulations which are not being followed.

Enclosed is a letter that I mailed to the Kansas Commission on Civil Rights and the Equal Employment Opportunity Commission regarding a decision handed down by the Kansas Commission on Civil Rights. This was the result of a complaint filed by myself against the Kansas Arts Commission. As I am 51 years of age and a person 15 years younger was hired, I have filed a complaint of Age Discrimination.

This is not the first complaint I have filed against state agencies for unfair hiring practices, but the results are consistently the same. I am given little or no opportunity to respond to excuses offered by the hiring agencies and see nothing in writing until the so called "Final Findings" are handed down.

If the Kansas Commission on Civil Rights is performing its intended functions, then an explanation is in order. Otherwise, it would appear that this agency is no more than political window dressing. In an effort to comply with affirmative action for females and minorities, the state of Kansas has gone overboard in discriminating against white males past 40. State agencies have become the worst violators.

To give you some background information about my qualifications, I was a state employee for six years and had hoped to work at least 10 years or longer in order to qualify for retirement. I previously had worked 15 years in the private sector for private businesses. My former employers are willing to vouch for my work and I have a proven track record.

Having suffered both age and sex discrimination with nine different prospective employers, I am now willing to work with your committee in any manner possible to revitalize the investigative guidelines of the Kansas Commission on Civil Rights. They have consistently overturned every complaint.

Confidentially, I have been encouraged to contact your committee by certain employees of that agency who have firsthand knowledge of its tactics but dare not speak out. I shall be more than glad to appear as a witness and testify before any legislative committee that is concerned about age discrimination and reverse sex discrimination being practiced by state agencies who are supposed to uphold the law.

Attachment #5
House Labor and Industry
March 31, 1987

Respectfully,

Paul E. Bocquin
Paul E. Bocquin
Route 2
Howard, KS 67349
Phone 316 374-2438
913 232-3662

December 14, 1985

Arthur R. Bruce, Supervisor of Compliance
Kansas Commission on Civil Rights
214 Southwest Sixth Avenue -- 1st Floor
Topeka, Kansas 66603-3780

Equal Employment Opportunity Commission
Kansas City Area Office
911 Walnut, 10th Floor
Kansas City, Missouri 64106

SUBJECT: #7113-85, Bocquin v. State of Ks. Kansas Arts Commission

To Whom it May Concern:

This is to notify the Kansas Commission on Civil Rights of a formal request for a complete review of the investigation of the above case. This also is a request to the Equal Employment Opportunity Commission for a Substantial Weight Review of the final findings of the Kansas Commission on Civil Rights.

The requests are being made because of the following discrepancies in the Case Summary:

Page Three under III. F. 1. The executive director states that the person who was hired had some background in the arts and that I had none.

Reply: Neither the job description nor the interviewers mentioned a preference for an artist, which is a separate classification from Informational Writer. The director does not specify the type of artistic background he was looking for or the artistic background of the successful applicant. I could have given them a complete report of my background in music, the humanities, music appreciation and instrumental studies, arts shows and concerts I have covered as a reporter, plus 20 years of interest in museums and historical research. I have been active in three different historical societies and presently am historian and a board member of our county historical society. So, there is no doubt in my mind that I could "speak their language" when interviewing artists. Although I did mention some of these points during the interview, they seemed to be more interested in a professional writer or journalist. However, it would appear that the interview team was following a set of guidelines unrelated or at best remotely related to the Civil Service job description for Informational Writer.

Page Two under III. D. and Page Three under III. F. 3. The age of the female who was first offered this position has not been disclosed, only some brief remarks about her public relations skills. The term "public relations" is vague and covers a variety of different types of skills. This position opening was for Informational Writer II. A public relations position comes under a different Civil Service classification. Incidentally, I have had some public relations experience myself but was not asked about this during the interview.

Page Four, III. G. 2. The commissioner states that my photographs were of "very poor quality" and my writing "bothered him".

Reply: This position did not call for a career photographer. The job description simply states that about 10 percent of the work involves arranging for photographic documentation of KAC events. I was not asked to bring along photographic samples but did pick up a few unarranged pictures which I brought along in an envelop. Had they informed me that these photographs would "sway their decision" I could have brought along a complete album of quality photographs, both color and black and white. The job title (Informational Writer) and job description focused primarily on writing skills and that was what I presented in the interview.

Page Four, III. G. 2. a. The commissioner states that I referred to women in the articles as "gals" and that this was "very archaic" if not "sexist".

Reply: I request a complete retraction of the statement that I referred to women in my writings as "gals". I also request a formal apology to suggestions that my writings are "sexist" and "very archaic". At no time have I ever used the word "gal" in either the written or spoken word. I have carefully reviewed my articles to see whether one of my editors or supervisors may have inserted such language without my knowledge. I have found none, and I demand that the Kansas Arts Commission produce the evidence. Either they have mistaken the writings of another applicant for my own, or else this accusation has been fabricated.

Page Five under III. H. 1. b. The touring arts coordinator states that my writing was "rather stilted and formal".

Reply: I gave them samples of my most current writing, which had been with the Kansas Department of Revenue and State Conservation Commission. Those agencies required factual, research-type information that had to be accurate enough to stand up in court. Had I known that the Kansas Arts Commission was looking for informal writing or human interest articles, I could have produced numerous samples from my employment with the Augusta Daily Gazette, Independence Daily Reporter and Tulsa World. Unfortunately, they did not tell me what they were looking for and I could not read their blank expressions. I have had 15 years of experience with informal publications before working for the state of Kansas.

In summary, it should be pointed out that Margaret Good, the field representative for the Commission on Civil Rights, discussed only two of the above arguments with me on the telephone before the "final findings" were handed down by her agency. She said nothing about the others, including the "sexist" and "archaic" charges. Therefore, I was denied equal time to respond to the Kansas Arts Commission's groundless accusations.

Respectfully,

Paul Bocquin

Paul E. Bocquin
617 Taylor, Apt. 6
Topeka, KS 66603
Phone: 232-3662
316 374-2438