

Approved March 23, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at
Chairperson

1:30 a.m./p.m. on Tuesday, March 17, 1987 in room 527-S of the Capitol.

All members were present except:

Senator Roy Ehrlich

Committee staff present:

Jerry Ann Donaldson, Research Department
Gordon Self, Revisor's Office
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Senator Eugene Anderson
Brandon L. Myers, Senior Legal Counsel-KS Commission on Civil Rights
Molly Daniels, representing Kansas Department on Aging
Nadine Burch, Senior Advocate for the Kansas Coalition on Aging

Chairman Thiessen called the meeting to order at 1:30 p.m. and said we would be hearing testimony on SB351, calling upon Senator Eugene Anderson, who requested SB351 be introduced in Senate Federal and State Affairs Committee.

SB351: An Act concerning the Kansas age discrimination in employment act; extending coverage.

Senator Eugene Anderson said a few years ago when considering an age statute, we needed a statute closely aligned with the Federal statute. Since that time, there has been some changes in the Federal statutes, and as a result of those changes the Kansas Commission on Civil Rights continues to investigate complaints and they are not paid for them, which creates a burden on the agency when they receive no benefits.

We do have contracts close to \$300,000 with the Federal Government, and the States allow the commission to utilize part of those funds. When I left the commission, a few years ago we were allowed to use about half of the funds for the agency, and the other half was for general funds. We have been told since the draft of this bill, unless we do have some ramification of the inequalities between the two laws, then we are subject to lose between \$40,000 and \$50,000 for investigating age claims.

That is the intent of this statute, to really bring the State statute as nearly as possible with the Federal Statute. (Attachment 1)

Senator Anderson introduced to the committee, Joanne Hurst, Director-Kansas Commission on Civil Rights, and Bob Lay, Assistant Director-Kansas Commission on Civil Rights.

Chairman Thiessen asked Senator Anderson if there was anything in the bill, that goes beyond what the Federal statute requires.

Senator Anderson said the Federal statute starts with an employer with 20 or more employees, and the State of Kansas is 4 employees.

Brandon L. Myers said the proposed amendments are intended to make the coverage of the KADEA-Kansas Age Discrimination Employment Act comparable to the Federal ADEA. Most Kansas employers basically any employer employing 20 or more employees are already covered by the Federal ADEA. The KADEA covers those employing 4 or more persons. The only affect of the KADEA changes would be to employers in Kansas, employing between 4 and 19 employees. Those with less than 4 are not covered and, still would not be covered.

Since the introduction of SB351 we have received several suggestions from the Federal Equal Employment Discrimination in Employment Act for modification to the language proposed in the bill. With these changes Equal Employment Opportunity Act, EEOA staff indicates that the Kansas ADEA would be in substantial conformance with the Federal ADEA and, would facilitate the corollary increase of Federal funding to the KCCR.

Mr. Myers reviewed the language of the proposed amendments to SB351 with the committee members and asked that the members view the bill favorably. (See Attachments 2-A, B & C)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

room 1:30, Statehouse, at 527-S ~~xxx~~ p.m. on Tuesday, March 17, 1987

Chairman Thiessen said on page 2, Attachment 2-A, line 0191 was to change its publication in the statute book to July 1, 1987, and told Mr. Myers, that is already the date of publication, July 1, 1987, and if we change it to the State Register, then it would become effective as soon as the Governor signs it and if you will be getting paid for what you are doing anyway, then the sooner we can put it into effect the better off you would be.

Questions by the members addressed to Mr. Myers, were aside from conformity, what is your objective? Concern with age, like firefighters being able to work until they are 85 to 90 years of age, and how would those complaints be handled and, why did the Federal cut at employer size of 20 employees

Mr. Myers said to avoid impact and stereotyping on people able to perform in all civil right acts, regardless of age, if they qualify, any age applies. Mr. Myers said he was not sure about the cut off of 20 employees.

Senator Morris said he thought it had something to do with the same as the Federal minimum wage law which was determined at a certain dollar volume of business to affect Interstate Commerce. It had nothing to do with Interstate Commerce and I think they probably felt the same way, if they had over 20 employees it affected Interstate Commerce and they could regulate under that warrant.

Molly Daniels said the Department on Aging supports SB351. We see it as a way to help older people realize that the affects of discrimination can be devastating financially and psychologically, who are forced to retire at a certain age. We also feel that the Kansas Commission on Civil Rights needs to have strong support to properly enforce this. I refer you to my written testimony, to the survey that was done last year by the University of Kansas. I think there were 500 employers surveyed and 66% of them said that they still find that age discrimination is still a problem in Kansas. (See Attachment 3)

Nadine Burch said she was here today, because she is a senior citizen and an advocate for the Kansas Coalition on Aging, and she supports SB351.

This bill would amend current Kansas statute, which provides no protection against age discrimination for persons who are over the age of 70. I have been discriminated against, twice since my 70th birthday. At the time this statute was adopted, it coincided with the Federal law on age discrimination. Now Federal law has been changed to provide protection for persons age 70 and older. It is time for the State to take similar action to assure that persons over the age of 70 are not discriminated against on the basis of age. We need protection against discrimination at local, state and federal levels to assure fair and equitable treatment of persons at all ages. (See Attachment 4)

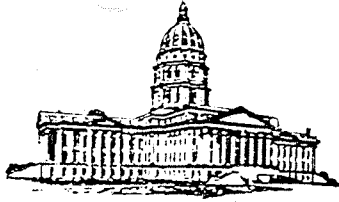
Paul E. Bocquin, Howard, Kansas turned in written testimony. (See Attachment 5)

Senator Thiessen said we would take the proposed amendments under advisement with the Revisor.

Senator Feleciano moved to approve the minutes of March 9, 1987, seconded by Senator Morris. The motion to approve carried.

Chairman Thiessen adjourned the meeting at 2:20 p.m.

EUGENE (GENE) ANDERSON
SENATOR, DISTRICT TWENTY-NINE
SEDGWICK COUNTY
P.O. BOX 4598
WICHITA, KANSAS 67204-0598



COMMITTEE ASSIGNMENTS
MEMBER: CONFIRMATIONS
EDUCATION
FEDERAL AND STATE AFFAIRS
PUBLIC HEALTH AND WELFARE

TOPEKA

SENATE CHAMBER

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

THE BILL BEFORE YOU SENATE BILL 351 IS DESIGNED TO BRING THE KANSAS ACT
ON AGE DISCRIMINATION IN LINE WITH THAT OF THE FEDERAL GOVERNMENT.

ATTACHED YOU WILL FIND A LETTER OF EXPLANATION TO ME FROM THE DIRECTOR
OF THE KANSAS COMMISSION ON CIVIL RIGHTS, THE AGENCY CHARGED WITH ENFORCING
THE AGE DISCRIMINATION ACT EXPLAINING THE FISCAL IMPACT OF THIS CHANGE.

SINCERELY,

A large, stylized handwritten signature in black ink, appearing to read 'Gene Anderson'.

EUGENE ANDERSON, SENATOR

MIKE HAYDEN, GOVERNOR
STATE OF KANSAS



COMMISSION ON CIVIL RIGHTS

LANDON STATE OFFICE BLDG.—8TH FLOOR
900 S.W. JACKSON ST.—SUITE 851 S.
TOPEKA, KANSAS 66612-1258
(913) 296-3206

JAN. W. FLEER, CHAIRPERSON
MANHATTAN
CORBIN BENHAM
WICHITA
ANITA FAVORS
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GEORGE M. LATTIMORE
WICHITA
LOU ANN SMITH
TOPEKA
B. A. VILLARREAL
OVERLAND PARK
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LAWRENCE

JOANNE E. HURST
EXECUTIVE DIRECTOR
ROBERT G. LAY
ASSISTANT DIRECTOR
ROGER W. LOVETT
CHIEF LEGAL COUNSEL
BRANDON L. MYERS
STAFF ATTORNEY
ARTHUR R. BRUCE
SUPERVISOR OF COMPLIANCE
WILLIAM V. MINNER
FIELD SUPERVISOR
NORMA JEAN HODISON
OFFICE MANAGER

March 12, 1987

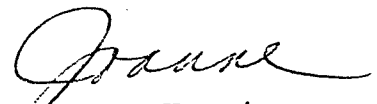
The Honorable Eugene Anderson
Senator, Kansas Legislature
State Capitol Building, Room 404-N
Topeka, Kansas 66612

Dear Senator Anderson:

I have attached a copy of the letter which we submitted to Mr. Gary Stotts in the Division of Budget as a fiscal note for Senate Bill No. 351. I think it will provide the information you requested. Additionally, I have attached a page which shows our federal receipts over a four year period, including projections for fiscal year 1988. As you are aware, most of our federal funding does come from EEOC (for instance, our funding from HUD in fiscal 1986 was \$23,000 of the total federal money, and in fiscal 1987, \$18,000 of the total federal money. We are projecting our fiscal 1988 funding based on the amount of \$280,000 from EEOC and \$18,000 from HUD). An age contract with EEOC could provide an additional \$40,000-\$50,000 per year, based upon EEOC's current pay schedule of \$400 per case. (It should be noted that we had expected to receive \$280,000 from EEOC fiscal 1987, but actually only received a contract for \$270,000. We projected our fiscal 1988 funding on the anticipation of receiving \$280,000 fiscal 1987.)

If after looking the enclosed materials over, you need additional information, please give me a call. Thank you for your help and for your support of this bill.

Sincerely,

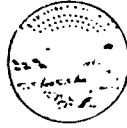

Joanne Hurst
Executive Director

JH:nh
Enc.

Kansas Commission on Civil Rights --
Federal Funding

	<u>FY 1988</u> <u>Gov. Rec.</u>	<u>FY 1987</u> <u>Gov. Rec.</u>	<u>FY 1986</u> <u>Actual</u>	<u>FY 1985</u> <u>Actual</u>
Beginning Balance	\$ 130,972	\$ 434,803	\$ 394,014	\$ 253,092
Receipts	<u>298,000</u>	<u>294,996</u>	<u>330,388</u>	<u>380,509</u>
Total Available	\$ 428,972	\$ 729,799	\$ 724,402	\$ 633,601
Expenditures	<u>424,274</u>	<u>598,827</u>	<u>289,599</u>	<u>239,587</u>
Ending Balance	<u>\$ 4,698</u>	<u>\$ 130,972</u>	<u>\$ 434,803</u>	<u>\$ 394,014</u>

civil.rm/jar



COMMISSION ON CIVIL RIGHTS

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JOYCE F. H.
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BRANDON L. MYERS
ARTHUR H. BRUCE
WILLIAM V. MINNER
NORMA JEAN HODISON

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

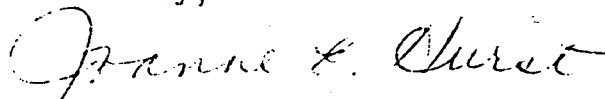
4. The premise upon which you have based cost estimates and anticipated revenues. As previously discussed in item three (3), estimates of costs and revenues are based upon our actual records of number of age complaints filed in the past, and our recent discussions and correspondence with representatives 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. Stotts, Acting Director
Division of Budget
Department of Administration
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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

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

AMENDMENTS TO S.B. 351:

1. Delete at line 0051 ". . . a state . . ." and add ". . . the State of Kansas or any municipality or political subdivision of the State of Kansas . . ."

2. At line 0070 after ". . . because of age . . ." add ". . . without a valid business motive.."

3. At line 0074 instead of eliminating the entire present K.S.A. 44-1113 (a)(2), substitute the following:

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

4. At line 0077 add a new "(3)" which consists of the language of the proposed change beginning at line 0077 which says:

"For an employer to follow any facially neutral employment procedure or practice which, in fact, results in discrimination, segregation or separation because of age unless the procedure or practice in question is validly justifiable by reason of business necessity."

The subsequent subsections should be re-numbered "(4)" through "(a)".

5. Add a new subsection "(10)" after line 0119 which says:

"For an employer, an employment agency, a 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 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."

6. At line 0121 delete subsection (b)(1) currently comprising lines 0121 and 0122. Then renumber the subsequent subsections as "(1)" through "(3)". Also, at line 0131 change "article 10" to "article 11."

7. At line 0169 change ". . . has attained 65 years of age but not 70 years of age . . ." to ". . . has attained 70 years of age . . ."

8. At line 0191 change ". . . its publication in the statute book." to ". . . July 1, 1987."

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).

Extension of Benefits

Employees will be protected from age discrimination in all terms and conditions of their employment, especially protection from forced retirement after they reach 70 years of age. With the removal of the present upper age limit of 70, employers will be barred, with certain exceptions, from using any age 40 years or over as a basis for an employment decision affecting an employee or job applicant.

Retirement benefits protection for older workers is also extended by making it unlawful for employers to eliminate the accrual of further benefit credits to an employee's retirement account after the employee attains the age for normal retirement under a pension plan providing either defined benefits for defined contributions. The changes in the laws will also bar employers from excluding from participation in a pension plan any person who is hired at an age that is within five years of the age set for normal retirement. Allowance is made, however, for the extension of the normal retirement date for any such late-age hired person.

Effective Dates

The extension of protection from age discrimination and involuntary retirement for employees beyond 70 years of age will take effect on January 1, 1987. An exception is made for those covered by union contracts that were in effect on June 30, 1986. For them, the extended protection will apply when the contract terminates, but not later than January 1, 1990.

The extension of the right to have pension credits accrued and allocated for work performed after retirement age and of the right to participate in a pension plan when hired near retirement age will apply to plan years beginning on or after January 1, 1988. A delay is allowed for employees covered by a pension plan maintained by the terms of a union contract that was ratified before March 1, 1986. The new rights will become effective when the contract terminates, but no later than January 1, 1990.

Exceptions to Forced Retirement Ban

Persons employed as executives or in positions that involve the making of high policy continue to be subject to forced retirement at 65 years of age.

Law enforcement employees and firefighters employed by state or local governments will also be subject to lower retirement ages for the next seven years. Mandatory retirement ages, even below 70, set for these employees by local laws that were in effect on March 3, 1983, may be applied until a study has been completed on valid tests of physical and mental fitness.

There is a seven-year phaseout of the ban on retirement at 70 years of age for tenured university faculty members, while a study is conducted on the possible effects of eliminating the ban.

The original general intent of Kansas Legislature when it adopted the KADEA was to pattern it after the Federal ADEA. EEOC does not believe it was precisely so promulgated. The general purpose

of S.B. 351 is to eliminate the original inconsistencies, between the two laws and also to incorporate the 1986 Federal amendments into the KADEA. The most obvious incentives for this is the possibility of immediate payments of \$40,000.00 - \$50,000.00 per year to the State of Kansas from EEOC for investigative work the KCCR essentially is already doing. Although there are policy decisions to be made by the Legislature herein as to what to cover and what to exempt, without passage of S.B. 351 individuals who work for employers employing less than 20 employees (covered only by KADEA) may be treated less favorably solely because of their age than individuals who work for employers with 20 or more employees who are covered by the Federal ADEA. Thus it makes sound fiscal and philosophical sense to adopt S.B. 351.

After Federal law is amended and adjusted pursuant to the studies and guidelines to be presented by Federal agencies as to the exemptions from current coverage, amendments to the Kansas statutes and/or regulations may be sought also.

The Kansas Supreme Court is on record in Woods vs. Midwest Conveyor Co., 231 Kan. 763 (1982) and elsewhere, that it will generally follow Federal Court interpretation of Federal anti-discrimination laws to interpret comparable Kansas anti-discrimination statutes. Thus, if the KADEA closely parallels the ADEA, the Courts and affected parties can have a body of interpretive law to guide them as to questions of rights and responsibilities under the KADEA.

Specific analysis of S.B. 351:

Change contained at line 0023:

"(a) 'Age' means an age of 40 or more years."

Comparable ADEA section:

29 U.S.C. <631(a), sec. 12:

"The prohibitions in this Act . . . shall be limited to individuals who are at least forty years of age."

Rationale for the 1986 Federal Change:

Legislative Notes

Sen. Heinsz.-Mr. President, the ADEA does not require employers to keep unfit or unproductive employees. All that the ADEA requires is that the employer make individualized assessments where it is possible and practical to do so. I believe that such determinations are possible and that is reasonable to require them rather than imposing age limits based solely on age. (Cong. Record, Page S16852, Oct. 16, 1986).

Sen. Moynihan.-Mr. President, I rise to support H.R. 4154, the Age Discrimination in Employment Amendments of 1986. This bill removes the specific mandatory retirement age of 70 for non-Federal employees, established by the Age Discrimination in Employment Amendments of 1978. This bill will allow the 78,000 Americans over 70 who are still working to continue to do so-and it will permit the 177,000 Americans between 65-70, who are still working-but might have had to retire in the next 5 years-to do so as well. For as long as they are able and so desire. (Cong. Record S16856, Oct. 16, 1986).

Sen. Metzenbaum.-Today, 11 percent of our population is over age 65. We cannot afford to ignore this valuable human resource. Premature retirement results in additional years of reduced income, which can drag older Americans into poverty. At the same time, premature retirement increases the burden on an already strained Social Security System. (Cong. Record S16852, Oct. 16, 1986).

Rep. Pepper.-Under current law, private sector employees may be mandatorily retired at age 70. Legislation before us today will prohibit age discrimination in employment altogether by eliminating the age 70 cap. In addition, the Senate bill exempts public safety officers-police, firemen, and prison guards-and professors from protection under the bill for 7 years during which time studies will be conducted to determine whether the retention of a mandatory retirement age for these two occupations is justified. Upon completion of these two studies, I will urge my colleagues to hold hearings immediately so we might act appropriately on the findings. (Cong. Record H. 11282, Oct. 17, 1986).

Rep. Hawkins.-Dr. Arthur Fleming testified before the Subcommittee on Employment Opportunities in May of 1984 that:

- (1) Freedom from discrimination based on age is no more inherently defensible at age 70 than at age 65. The principle, that of requiring employers to make judgments based on individual qualifications, remains the same at any age; it is the same principle that undergirds prohibitions of discrimination based on race, sex and other group-shared characteristics.
- (2) The proposed change would help in the retention of some persons with highly developed technical skills in an economy that increasingly needs those skills.
- (3) Mandatory requirement harms the Social Security System. Workers who would otherwise continue in employment, contributing to trust funds, and shortening the time during which they would draw benefits, are now retiring and beginning to draw funds from Social Security. Savings are estimated at .02% of taxable payroll in the year 2020, or in present-day terms \$700,000 a year.
- (4) The ADEA now leaves unprotected a class of persons who need it the most-the elderly poor, who must (if able) continue working beyond age 70 because they lack other sources of adequate income. Often employers will forcibly retire all employees at age 70, even the lowest paid workers not covered by the company's pension plan.
- (5) Some 800,000 workers over age 70 would gain important job protections. In addition, the Labor Department has estimated that 200,000 more older workers would remain in the work force by the year 2000 than under current law. (Cong. Report 99-756, Aug. 6, 1986, page 5).

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.

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 a 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.

Comparable ADEA provisions at 29 USC 630 sec. 11:

"(j) The term 'firefighter' means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

"(k) The term 'law enforcement officer' means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purposes of this subsection, 'detention' includes the duties of employees assigned to guard individuals incarcerated in any penal institution."

NOTE: Although the proposed "law enforcement officer" definitional addition to the KADEA in S.B. 351 is precisely comparable to the Federal ADEA, it is suggested that, at line 0051, it probably would be better to amend the bill to read ". . . criminal laws of the State of Kansas or any municipality or political subdivision of the State of Kansas. . .", rather than as it presently reads ". . . criminal laws of a State . . ."

Changes at S.B. 351, lines 0071-0073 and 0073-0082:

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.

NOTE: We would recommend amending S.B. 351 to retain "without a valid business motive." This should be added after " . . . because of age" on line 0070. In proposing the SB 351 language we inadvertently struck too much from the current statutory language.

The purpose of these changes are primarily to address the concern enunciated by EEOC that the present KADEA provides an easier defense ("valid business motive") than does the Federal ADEA ("business necessity") in "disparate impact" (as opposed to "disparate treatment") cases. This change is not in response to the 1986 Federal law changes, but is in response to the obstacles to a worksharing agreement posed by what they consider deviations of the KADEA/ADEA.

S.B. 351 changes at lines 0136-0137 and 0138-0151:

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;
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;
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~~
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.

(NOTE: There perhaps is a slight deficiency of syntax between line 0122 and line 0141 which, although not crucial, may need to be adjusted during consideration hereof.)

Comparable Federal ADEA section, 29 U.S.C. 623:

"(i) It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken-

"(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

"(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this Act."

Federal ADEA then contains a provision that this exception is repealed December 31, 1983. NOTE: For clarity, perhaps a similar repeal section should be added to S. B. 351.

Rationale for the Federal change:

LEGISLATIVE NOTES

Sen. Ford.-The hiring and retirement age requirements of a plan in effect as of March 3, 1983 become the floor for allowable plans. This is the date that the EEOC versus Wyoming case was decided. If jurisdictions have raised or eliminated mandatory retirement ages after this date, they have the choice of either moving back to the plan requirements in effect on March 3, 1983, or remaining where they are. However, State and local governments would not be able to lower retirement age requirements below what was in effect as of March 3, 1983. The purpose of this provision is to provide relief to those jurisdictions which were forced to respond to the Wyoming case, while at the same time ensuring that no lesser discrimination protection will be provided for these workers than what was in effect at the time the Wyoming case was decided. (Cong. Record S16853, Oct. 16, 1986.)

Sen. Ford.-Mr. President, Congress has already exempted from ADEA certain classes of Federal Government workers who regularly face unique mental and physical demands. Since 1974, Federal firefighters and law enforcement officers, including members of the FBI, secret service and Federal prisons, must retire at age 55. This amendment extends the exemption for the next 7 years to States and municipalities to allow them to determine retirement and entry ages for their own public safety officers and firefighters, just as Congress has done for similarly situated Federal employees. (Cong. Record S16854, Oct. 16, 1986.)

(CCH, supra, p. 30)

NOTE: Thereafter in the Federal ADEA there are the following additional provisions which explain why these "7-year exemptions" were made:

(a) STUDY.-Not later than 4 years after the date of enactment of this Act, the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall-

(1) conduct a study-

(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes-

(A) a description of the results of such study, and

(B) a statement of the recommendations developed under paragraph (1)(C).

(b) CONSULTATION REQUIREMENT.-The Secretary of Labor and the Equal Employment Opportunity Commission shall, during the conduct of the study required under subsection (a) and prior to the development of recommendations under paragraph (1)(C), consult with the United States Fire Administration, the Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters, and their employers, and organizations representing older Americans.

(c) PROPOSED GUIDELINES.-Not later than 5 years after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

Federal rationale on study provisions: (CCH, supra, p. 31-32):

LEGISLATIVE NOTES

Rep. Hawkins.-Physical fitness and medical testing have been shown to be a much more accurate and cost-effective determinant of an individual's physical condition, risk of incapacitating illness, and ability to perform a job. Doctors and physiologists have demonstrated that age cutoff standards, when used as a job selection criterion, may be discriminatory and unreliable. (Cong. Record, Page H8135, Sept. 23, 1986.)

Rep. Jeffords.-The 7-year exemption will give the Secretary of Labor and the Equal Employment Opportunity Commission the opportunity to complete the studies mandated by the bill on the use of fitness tests as appropriate measures of the competency of police officers and firefighters to perform the requirements of their jobs. While I do not favor permanent exemptions from civil rights laws, I do recognize the special problems that may arise for firefighters and law enforcement officers and can support a transition period. The studies should help determine whether individual testing for these jobs is a feasible alternative to a blanket exemption. (Cong. Record, H. 11283, Oct. 17, 1986).

Clearly, if and when the Federal law is changed (after the Federal government does all the background studies which the State can draw upon), then refinement of these provisions may be required.

The change at lines 0138-0140 deletes a provision of the current KADEA which EEOC found to be an objectionable deviation from the ADEA. They viewed this as seemingly allowing municipalities and local governments to pass law and which "permit public employers to observe the terms of benefit plans that may have arbitrary age distinctions." (EEOC counsel letter, p. 2) Thus, we have recommended simply eliminating the current provision. The current provision is essentially gratuitous anyway, since most, if not all, local governmental entity are covered by the Federal ADEA which does not allow that which EEOC views the KADEA to potentially allow. In short, the current apparent exemption under the KADEA serves no purpose.

Also, the addition/change at lines 0133-0135 is meant to address EEOC's concerns at p. 2 of its Counsel's letter that the current KADEA leaves 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." Apparently the KADEA was drawn based upon the Federal ADEA, but failed to take cognizance of the 1978 ADEA amendments. This changes is to ameliorate this previous apparent legislative oversight.

S.B. 351 change at lines 0158-0166:

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.

Comparable Federal ADEA provision (29 USC 631):

(c)(1) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age [but not 70 years of age,] and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforefietable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$44,000.

NOTE: This provision previously existed before 1986 in the ADEA, except that the 1986 amendment changed the figure to \$44,000.00 from the original \$27,000.00.

Also, the ADEA contains the following section which we were unable to interpolate to the KADEA in any effective fashion.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

The legislature may wish to add such a comparable clarifying section or it could be viewed that such clarification could be left to be developed litigatively by drawing on Federal ADEA case law, or by subsequent regulations.

Federal rationale: (See CCH, supra, summary)

S.B. 351 change at lines 0167-0172:

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 servng under a contract of unlimited tenure (or similar ar-
0171 angement providing for unlimited tenure) at an institution of
0172 higher education.

Comparable Federal ADEA provision:

(a) SPECIAL RULE.-Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(d) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1201(a) of the Higher Education act of 1965)."

(b) TERMINATION PROVISION.-The amendment made by subsection (a) of this section is repealed December 31, 1993.

The Federal ADEA also contains the following:

(c) STUDY REQUIRED.- (1) The Equal Employment Opportunity Commission shall, not later than 12 months after the date of enactment of this Act, enter into an agreement with the National Academy of Sciences for the conduct of a study to analyze the potential consequences of the elimination of mandatory retirement on institutions of higher education.

(2) The study required by paragraph (1) of this subsection shall be conducted under the general supervision of the National Academy of Sciences by a study panel composed of 9 members. The study panel shall consist of-

(A) 4 members who shall be administrators at institutions of higher education selected by the National Academy of Sciences after consultation with the American Council of Education, the Association of American Universities, and the National Association of State Universities and Land Grant Colleges;

(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 should 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.

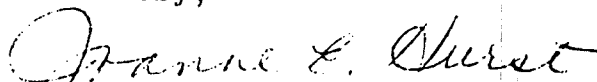
BLM/kp

-Gary L. Stotts, 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	--

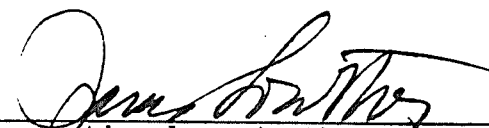
Agency Request/Governor's Recommendation

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.

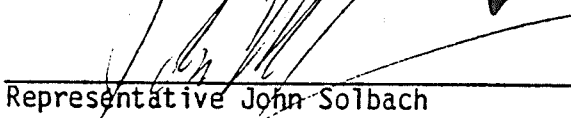
The Governor recommends expenditures of \$1,290,723 in FY 1987, an amount which is \$13,112 less than the agency estimate. The reductions are found in contractual services (\$25,663) and commodities (\$500), with an offsetting increase in salaries and wages (\$13,051). The Governor recommends expenditure 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:

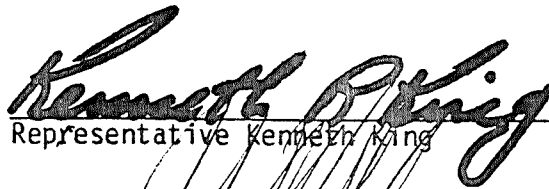
1. Restoration of the Civil Rights Investigator I position deleted by the Governor, but deletion of the funding for one Civil Rights Investigator I position and a reduction of \$22,308 from the State General Fund appropriation for the agency. The rationale for this recommendation is discussed in item 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~~^{41.0} 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

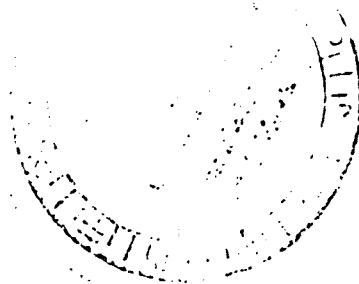


Representative John Solbach



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.

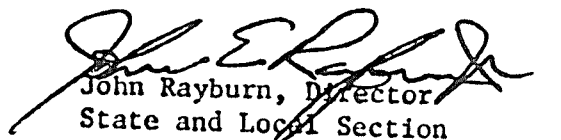
I am appending a copy of the results of the review of this statute by our Office of Legal Counsel.

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 - 1ST FLOOR
 LIBERTY BUILDING
 TOPEKA, KANSAS 66603-1780

PHONE 313-210-3100
 February 4, 1987

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 NORMA JEAN HODISON
 CHIEF CLERK

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 H. Hurst

JEH/BM:kp
Enclosures

MEMO

TO: Senator Gene Anderson
FROM: Brandon L. Myers ^{4/1}
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

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. Stotts, 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.

TESTIMONY ON S.B. 351
TO
SENATE LABOR, INDUSTRY AND SMALL BUSINESS COMMITTEE
BY
KANSAS DEPARTMENT ON AGING
MARCH 17, 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 on 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 S.B. 351.

TESTIMONY IN SUPPORT OF SB 351
NADINE BURCH
SENATE LABOR INDUSTRY & SMALL BUSINESS COMMITTEE
MARCH 17, 1987

I am Nadine Burch, Senior Advocate for the Kansas Coalition on Aging. I am here today to testify in support of SB 351. I testify on behalf of myself and my peers who are past the age of 70. This bill would amend current Kansas statute, which provides no protection against age discrimination for persons who are over the age of 70.

Personally, I have been discriminated against twice since my 70th birthday. Chronological age has little to do with employability. If it were a criteria for employment, Ronald Reagan, Claude Pepper and George Burns would be out of a job. Age discrimination does occur. During my two years as a Community Conciliator for age discrimination in six Midwest states, I heard cases of age discrimination in employment, housing, state agencies and universities.

At the time this statute was adopted, it coincided with the federal law on age discrimination. Now federal law has been changed to provide protection for persons age 70 and older. Recently, I learned that the Topeka city ordinance on discrimination had no protection against age discrimination. Through the efforts of several groups and individuals, this is now being corrected. It is time for the state to take similar action to assure that persons over the age of 70 are not discriminated against on the basis of age. We need protection against discrimination at local, state and federal levels to assure fair and equitable treatment of persons at all ages.

Thank you for holding this hearing on this subject which is of great importance to older workers. I urge your support of this bill.

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.

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
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Topeka, KS 66603
Phone: 232-3662
316 374-2438