

HB 2652

None Opposed

Rep. Arthur Douville spoke in favor.

Sub-Committee Recommendation: Be passed

HB 2754

None opposed

Rep. Jim Lowther spoke in favor

Sub-Committee Recommendation: Be passed

HB 3002

None Opposed

Rep. Vince Snowbarger spoke in favor.

Sub-Committee Recommendation: Be passed

SB 410

None opposed

In favor: Will Burnett of the Salina Civil Rights Commission
Meryl Dye of the Hutchinson Human Relations Department
Rep. Donna Whiteman
Kaye Crawford
Don Morris of Salina

Attachments: 1. Letter of support from Brandon Myers of the Kansas Commission
on Civil Rights
2. Statement of Meryl Dye, Director of the Hutchinson Human
Relations Department

Sub-Committee Recommendations: Be passed with amendments

HB 2689

Opposed: None

In favor: Ron Smith of the Kansas Bar Association
Walter Scott of the Associated Credit Bureaus of Kansas

(Attachments: 3) Statement with suggested amendment by Mr. Walter Scott

Sub-Committee recommendations: Be passed with amendments

MIKE HAYDEN, GOVERNOR
STATE OF KANSAS

B. A. VILLARREAL, CHAIRPERSON
OVERLAND PARK

CORBIN BENHAM
WICHITA

JAMES BUTLER
MANHATTAN

ANITA FAVORS
KANSAS CITY

GEORGE M. LATTIMORE
WICHITA

LOU ANN THOMS
TOPEKA



COMMISSION ON CIVIL RIGHTS

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March 18, 1988

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WILLIAM V. MINNER
FIELD SUPERVISOR

LINDA AUWARTER
OFFICE MANAGER

Honorable Senator Eric Yost
State Capitol Building - Room 517-S
Topeka, KS 66612

RE: S. B. 410

Dear Senator Yost:

Thank you for having your office notify us of the Senate Judiciary Sub-Committee's hearing on Senate Bill 410 on March 22.

We may have great difficulty having anyone available at that time to appear and present the Commission's position on this bill. Our Chief Legal Counsel is currently on leave from the office to be with his wife who is hospitalized and gravely ill. I am to argue a longstanding case before the Kansas Supreme Court the morning of the 22nd. Our Executive Director is currently out-of-state on Commission business and may well be unavailable on the 22nd. If at all possible, we will attempt to have someone available to attend the hearing and present the Commission's position on this bill. However, I am sending copies of this letter to each Committee member just in case, and would ask that it be placed on record in the committee proceedings.

The Commission generally supports the intent of this bill and urges its passage. (There may, of course, possibly be amendments, but as long as they are consistent with the basic purpose of the bill, our position would remain the same.)

Certain City Human Relations Commissions/Departments who administer their city's antidiscrimination ordinances are currently without power to enforce their remedial orders where discrimination in violation of the ordinances has been proven. Neither can they procure enforcement of their administrative subpoenas issued to enable them to investigate discrimination complaints filed with them. The reason for this is that the city ordinances often have been patterned after the state

Attach 1

Honorable Senator Eric Yost
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antidiscrimination statute (K.S.A. 44-1001, et seq., Kansas Act Against Discrimination) which makes the state agency's (KCCR's) orders and subpoenas enforceable by state district courts. The City ordinances which have adopted comparable provisions are highly questionable, insofar as the Cities have thereby attempted to confer jurisdiction and responsibility upon a state court to enforce the City agency's orders and subpoenas. Only the State of Kansas can confer such jurisdiction. Senate Bill 410 is intended to confer such jurisdiction upon State District Courts.

This issue was brought to the forefront by a situation arising out of Salina which resulted in Attorney General opinion No. 86-90.

Without Senate Bill 410, the City HRC's in question probably have no powers to enforce their orders and cannot enforce their ordinances as they are expected to do. Even if a Complainant might on their own seek enforcement of such a remedial order, the Complainant is effectively left in the lurch by an agency which is powerless to enforce its own orders. Plus, since the city agency cannot enforce its subpoenas, it may not be able to investigate so as to reach a point where a remedial order even can be issued. City HRC's need these powers to be effective. Cases they can effectively handle may lessen the burden of cases upon the State agency (KCCR) which is heavily burdened with cases.

The only apparent alternative to either allowing HRC's no enforcement powers or allowing enforcement through State District Courts is to have the cities restructure their ordinances so as to allow enforcement through their municipal courts. Since most municipal courts exist primarily to deal with traffic and criminal matters, it would be somewhat anachronistic and probably quite burdensome to expect these types of courts to deal with often complex civil matters involved in discrimination cases. It seems much more logical to simply have the state (by adopting S. B. 410) confer such jurisdiction upon the state district courts who routinely have been dealing with such comparable matters under the KAAD for many years.

Honorable Senator Eric Yost

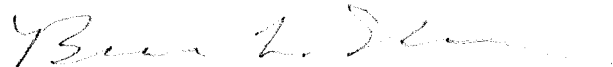
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I would note that I have been told that other city ordinances (consumer protection ordinances, for example) suffer from the same enforcement defects, which this bill or a similar one could aid in curing also.

In summary, S. B. 410 is a well-intentional bill, addressing an area of need and merits consideration and passage.

Respectfully,



Brandon L. Myers
Senior Legal Counsel

BLM/kp

cc: Senator Frank Gaines

Senator Paul Burke

Senator Wint Winter

Joanne E. Hurst, Executive Director

Roger W. Lovett, Chief Legal Counsel

Testimony of Meryl Dye, Hutchinson Human Relations Director, before the Kansas Senate Judiciary Subcommittee, March 22, 1988, in regard to S. B. 410, an act concerning civil procedure relating to enforcement of orders of local human relations commissions.

Goodmorning. My name is Meryl Dye and I live in Hutchinson, Kansas. I am the Human Relations Director for the City of Hutchinson, and have held this position for five (5) years. I would like to speak in support of Senate Bill 410, which proposes to lend access to district court to local human relations commissions for the purpose of securing enforcement of orders.

Generally, the reasons local human relations agencies are created is to assure that citizens of our communities are provided equal opportunities in life's endeavors, to eliminate patterns of prejudice and discrimination, and to provide an avenue of redress to victims of discrimination in those instances when they are least likely to afford the pursuit of an equitable resolution to claims through private action. Merely incidental to these purposes is the relief of a congested backlog of discrimination claims filed with the courts.

Attach 2

A local human relations ordinance is a major legal instrument for combatting the discrimination that threatens the very fabric that holds a community together. An ordinance which authorizes a local human relations commission to award compensatory and punitive damages in a discrimination case is incidental to effectuation of the public purpose of eliminating discrimination within a community.

A local human relations commission's standing in court for the purpose of securing enforcement of its orders has crucial significance in the struggle for equal opportunity. Without such standing, our agencies are crippled. We are simply "claims adjustment bureaus" functioning only as screening agents for potential court suits rather than the enforcement agencies we were intended to be.

When a respondent party is secure in his assumption that a complainant will not appeal a commission order because that person lacks the vast resources to do so, the respondent has little incentive to enter into a conciliation agreement. Even if conciliation succeeds where there is no threat of litigation, human relations agencies are forced to accept inadequate settlements and conciliation agreements that leave unresolved issues of great importance, thereby blunting and limiting the potential of the local antidiscrimination ordinances. Respondents have come to understand that paying money in settlement agreements is

a way of disposing of all claims, past, present and future, while buying a license to continue the discriminatory pattern with a minimum of alteration. Only the government has the necessary resources to attack all practices of discrimination maintained by large corporations, labor unions, realtors and other institutions.

Generally, the individual right to sue, standing alone, is a poor method of enforcing legislation designed to alter traditional institutional patterns of behavior, especially in the area of civil rights. Aggrieved individuals who file complaints become impatient and disillusioned with the prospect of relief under current programs where enforcement power is lacking. Furthermore, history has shown that only a very small fraction of all individuals who are the victims of discrimination file complaints.

Programs of voluntary compliance with their expressed or implied promise not to enforce the law have not and will not eliminate patterns of discrimination. The underlying reason for this failure is not hard to find. Discrimination is deeply institutionalized. Employers, labor unions, realtors and other respondents in these cases may make some superficial alteration in response to the nuisance of public exposure and criticism of discriminatory practices. But they will not, except under legal compulsion, change the basis on which

their institutions have, in their view, functioned quite satisfactorily. Yet so pervasive is the nature of discrimination that only far-reaching, systematic change will eliminate the entrenched racial and sexual patterns of the past. Effective enforcement of our local human relations ordinances requires the separation of efforts to resolve individual complaints from efforts to eliminate institutional discrimination.

Senate Bill 410 would provide statutory basis for the transformation of human relations commissions and departments into effective law-enforcement agencies. I strongly urge your support for the bill for all the reasons stated here today by my friends and colleagues.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 17, 1986

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

ATTORNEY GENERAL OPINION NO. 86- 90

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

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

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

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Dear Mr. Bengtson:

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

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

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

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

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

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

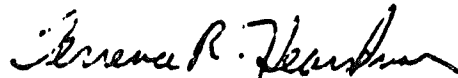
You next ask whether amendment of the Salina Code to include a provision similar to K.S.A. 44-1011 would provide a means of enforcement of the Human Relations Commission Order. In this regard, it is our opinion that the rules of standing prescribed by K.S.A. 60-217 may be modified only by enactments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

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

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

WALTER N. SCOTT, JR.
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March 22, 1988

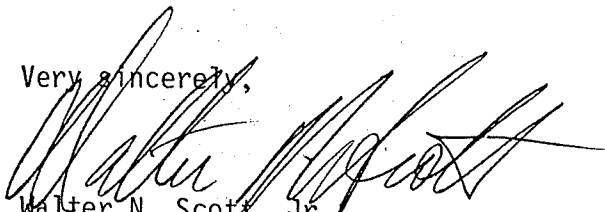
Senate Judiciary Sub-Committee #1

Mr. Chairman and Members of
the Committee:

For your information and consideration, the following schedule shows differences in weekly, every-2-weeks, semi-monthly and monthly garnishment amounts of \$1,000.00 monthly after deductions required by law:

Monthly:	Semi-Monthly
\$1,000.00 net	\$500.00 net
\$250.00 garnishment amount	\$125.00 garnishment amount
Every-2-Weeks	Weekly
\$461.54 net	\$230.77 net
\$115.39 garnishment amount	\$57.69 garnishment amount

I appreciate your giving me the opportunity to testify.

Very sincerely,

Walter N. Scott, Jr.

WNS:cg

Attach 3