



TEXAS COMMISSION ON HUMAN RIGHTS

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October 23, 1992

The Honorable Dan Morales
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INTERAGENCY MAIL

RECEIVED

OCT 29

Opinion # 17830

ATTN: Madeleine Johnson, Chair
Opinions Committee

RE: Request for an Attorney General's Opinion Relating to the Powers of Local Commissions as Authorized Under Article 4, Section 4.03 of the Texas Commission on Human Rights Act (TCHRA), Article 5221k, Vernon's Texas Civil Statutes

Dear Attorney General Morales

RE 17830

Article 4 of the TCHRA authorizes the creation of local human relations commissions to promote the purposes of the Act. In addition to having original jurisdiction to receive, to investigate and to conciliate a charge, and to sue to enforce the provisions of the TCHRA, Section 4.03(5), a local commission is required by Section 4.04(a) to accept complaints referred to it by the TCHR. Some guidance in the area of local commissions is found in Op. Tex. Att'y Gen. No. JM-228 (1984), p. 1024, where it states "[N]o local action is necessary for enforcement of article 5221k on the local level by the state commission absent [t]he creation of a local human relations commission." See TCHRA, §§4.01-4.04; 40 Tex. Admin. Code §§325.1-325.5 (relating to the creation, authority, and procedures of local commissions).

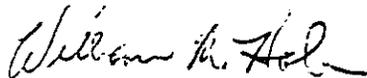
In JM-278, the Attorney General stated that even in the absence of a local ordinance, a local commission may file civil actions to remedy discrimination as authorized by state law for complaints deferred by the federal government or referred by the TCHR. However, the opinion is unclear as to whether a local commission must file suit in state, county or municipal court. It seems logical to conclude that a local commission created under TCHRA, Section 4.02 may file suit in state district court pursuant to Section 4.03(5). Only if a local commission was enforcing a local ordinance enacted pursuant to 4.01 would the municipal or county courts be an appropriate forum to litigate a discrimination claim. Even then, it would seem, that the local commission would have the option of pursuing a state law claim. Unfortunately, some of the legal counsel representing local commissions are uncertain about the authority of local commissions to file civil actions in state district court under Article 5221k. If your office concludes that such state district court actions are authorized, local commissions would more willingly share the burden of enforcing state anti-discrimination laws.

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It is the Commission's interpretation that Article 4, Section 4.03(5) authorizes a local commission the authority to receive, investigate, seek to conciliate, and pass on complaints alleging a violation of the Texas Commission on Human Rights Act and to file civil action in state district court to effectuate the purposes of the Texas Commission on Human Rights Act if the Texas Commission on Human Rights has referred a complaint to the local commission. Further, under Article 4, Section 4.03(7) a local commission is empowered to issue administrative subpoenas and enforce the same in state district court to secure necessary evidence relevant to an investigation of alleged violations of the Texas Commission on Human Rights Act.

On behalf of the Commission, I am requesting an expedited Attorney General's Opinion on the above referenced subject to determine if the above referenced Commission interpretation is correct.

Sincerely,



William M. Hale
Executive Director

WMH:brs
Enclosure

xc: Mary Keller
Jack Tollett

final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation by another agency of the state, federal, or local government.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission. [Sec. 3.05 was added by SB 479, L. 1989, effective Sept. 1, 1989.]

[¶ 28,054] **ARTICLE 4.—Local Commissions**
[¶ 28,054.01]

Sec. 4.01. Local Ordinances.—A political subdivision may adopt and enforce an ordinance that prohibits practices designated as unlawful under this Act, or otherwise declared unlawful under federal or state law.

[¶ 28,054.02]

Sec. 4.02. Local Commissions.—A political subdivision or two or more political subdivisions acting jointly may create a local commission to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from discrimination because of race, color, disability, religion, sex, national origin, or age and may appropriate funds for the expenses of the local commission. [Sec. 4.02 reads as last amended by SB 479, L. 1989, effective Sept. 1, 1989.]

[¶ 28,054.03]

Sec. 4.03. Powers of Local Commissions.—A local commission may exercise the following powers in addition to other powers authorized by this Act or other laws:

- (1) to employ an executive director and other employees and agents and fix their compensation;
- (2) to meet and exercise its powers as provided in this Act;
- (3) to cooperate or contract with individuals or state, local, or other agencies, public or private, including agencies of the federal government and of other states and municipalities;
- (4) to accept public grants or private gifts, bequests, or other payments;
- (5) to receive, investigate, seek to conciliate, and pass on complaints alleging violations of this Act, and file civil actions to effectuate the purposes of this Act if the federal government or state commission has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission;
- (6) to render at least annually a report, a copy of which shall be furnished to the state commission; and
- (7) to request and, if necessary, compel by subpoena the attendance of necessary witnesses for examination under oath or affirmation, and the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this Act.

[¶ 28,054.04]

Sec. 4.04. Referral to Local Commission.—(a) The state commission shall refer a complaint filed with it to a local commission with the necessary investigatory and conciliatory powers if the complaint concerns discrimination in employment because of race, color, disability, religion, sex, national origin, or age, and:

- (1) the complaint has been referred to the state commission by the federal government; or
- (2) the jurisdiction over the subject matter of the complaint has been deferred to the state commission by the federal government.

(b) On referral by the state commission, the local commission shall take appropriate action within the scope of its powers. After referral to the local commission, the state commission shall afford the local commission a reasonable time, but not less than 60 days, to act to remedy the practice alleged as discriminatory in the referred complaint. If the local commission has not acted on the complaint within a reasonable time, the state commission shall reassume responsibility for the complaint and take appropriate action on it.

(c) A local commission may refer a matter under its jurisdiction to the state commission. [Sec. 4.04 reads as last amended by SB 479, L. 1989, effective Sept. 1, 1989.]

[¶ 28,055] **ARTICLE 5.—Discrimination in Employment**

[¶ 28,055.01]

Sec. 5.01. Employers.—It is an unlawful employment practice for an employer:

- (1) to fail or refuse to hire or to discharge an individual or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, disability, religion, sex, national origin or age; or
- (2) to limit, segregate, or classify an employee or applicant for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, disability, religion, sex, national origin, or age. [Sec. 5.01 reads as last amended by SB 479, L. 1989, effective Sept. 1, 1989.]

[¶ 28,055.02]

Sec. 5.02. Employment Agencies.—It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, disability, religion, sex, national origin, or age, or to classify or refer for employment an individual on the basis of race, color, disability, religion, sex, national origin, or age. [Sec. 5.02 reads as last amended by SB 479, L. 1989, effective Sept. 1, 1989.]

[¶ 28,055.03]

Sec. 5.03. Labor Organizations.—It is an unlawful employment practice for a labor organization: