

SEX:
LABOR:
HUMAN RIGHTS:
FEMALE LABOR:

Chapter 296, RSMo 1969, empowers the Missouri Commission on Human Rights to receive, investigate, conciliate and prosecute complaints of unlawful employment practices

based on sex, and to conduct hearings and issue such orders as are deemed appropriate in each case.

OPINION NO. 298

November 24, 1971

Honorable James G. Baker
Representative, District No. 3
104 East 41st Street
Kansas City, Missouri 64111



Dear Representative Baker:

This is in response to your request for an opinion from this office as follows:

"I am writing to request your opinion regarding the powers and duties of the Missouri Commission on Human Rights relating to sex discrimination. You will note that in 296.020 RSMo discrimination based on sex is made an unlawful employment practice. However, when the powers and duties of the commission are spelled out in 296.030 RSMo, there is no reference to discrimination on the basis of sex. I assume that this was merely an oversight, but I understand that the question has been raised as to the powers of the commission relative to discrimination based on sex and in particular regarding the commission's powers to hold hearings as provided for in 296.030 (8) RSMo."

When first enacted in 1961, Chapter 296, RSMo, entitled "Discriminatory Employment Practices," proscribed various employment practices, if practiced by certain employers because of "race, creed, color, religion, national origin, or ancestry," and empowered and charged the Missouri Commission on Human rights "To seek to eliminate and prevent discrimination in employment because of race, creed, color, religion, national origin, or ancestry . . ." (Laws 1961, page 439, Sections 1 through 3). See also, Sections 296.010, 296.020, and 296.030, RSMo Supp. 1963.

In 1965 the General Assembly repealed Sections 296.010, 296.020, and 296.050, RSMo Supp. 1963 and enacted in lieu thereof three new sections numbered the same. Laws 1965, page 442.

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The only change which bears on this opinion is the addition of the word "sex" to the new litany that appears in Section 296.020, RSMo 1969, which we quote in part:

"Unlawful employment practices defined.--It shall be an unlawful employment practice:

(1) For an employer, because of the race, creed, color, religion, national origin, sex or ancestry of any individual:

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, creed, color, religion, national origin, sex, or ancestry; or

(b) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, creed, color, religion, national origin, sex, or ancestry;"
(Emphasis added)

This phrase containing the word "sex" appears in no other section in this chapter. Section 296.030, RSMo 1969, providing for the functions, powers and duties of the commission, empowers the commission to take action in cases of discrimination because of race, creed, color, religion, national origin or ancestry. Such section does not grant to the commission powers to act in cases of discrimination because of sex.

The failure to amend Section 296.030 to include the word "sex" appears to have been an oversight on the part of the legislature, but as a general rule an omission cannot be supplied even when it is apparent that the omission resulted from legislative inadvertence. C.J.S., Statutes, Section 328, page 35. The Missouri Supreme Court recently expressed this general rule in State ex rel. Mercantile National Bank at Dallas v. Rooney, 402 S.W.2d 354, 362 (Mo. banc 1966):

"[T]he court cannot supply that which the legislature has, either deliberately, or inadvertently, or through lack of foresight, omitted from the controlling statutes. . . ."

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However, it is our opinion that interpolation of the word "sex" in Section 296.030 is not necessary to empower the Missouri Commission on Human Rights to act in this area of discrimination. The scope and breadth of Section 296.040, RSMo 1969, fully confers jurisdiction on the Missouri Commission on Human Rights to receive, conciliate and prosecute complaints of unlawful employment practices based on sex. Selected quotations from Section 290.040 clearly demonstrate this point:

"1. Any person claiming to be aggrieved by an unlawful employment practice may, . . . file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of, . . .

"2. After the filing of any complaint, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, he shall immediately endeavor to eliminate the unlawful employment practice . . .

"3. In case of failure to eliminate such practice, the chairman of the commission, . . . shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, . . .

"4. The case in support of the complaint shall be presented before the commission by the office of the attorney general of the state of Missouri, . . .

* * *

"6. If upon all the evidence at the hearing the commission shall find that a respondent has engaged in any unlawful employment practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to

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cease and desist from such unlawful employment practice . . ." (Section 296.040, RSMo 1969, emphasis added)

The phrase "unlawful employment practice" is defined by Section 296.020 to include a variety of employment practices which are unlawful if based on any of the following criteria:

". . . race, creed, color, religion, national origin, sex, or ancestry . . ."

This phrase is repeated fourteen times in Section 296.020, RSMo 1969. It is clear then that the legislature fully intended the Missouri Commission on Human Rights to exercise its powers in processing complaints of unlawful employment practices based on sex and conferred jurisdiction on the commission in Section 296.040 to do so. Further, this construction harmonizes with the legislative instruction contained in Section 296.070:

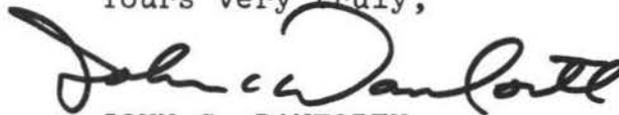
"The provisions of this chapter shall be construed liberally for the accomplishments of the purposes thereof, . . ."

CONCLUSION

It is the opinion of this office that Chapter 296, RSMo 1969, empowers the Missouri Commission on Human Rights to receive, investigate, conciliate and prosecute complaints of unlawful employment practices based on sex, and further to conduct hearings and issue such orders as are deemed appropriate in each case.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Leland B. Curtis.

Yours very truly,



JOHN C. DANFORTH
Attorney General