

1975 S.C. Op. Atty. Gen. 194 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4120, 1975 WL 22416

Office of the Attorney General

State of South Carolina

Opinion No. 4120

September 17, 1975

*1 The South Carolina State Human Affairs Commission does have the authority to enter into a letter of cooperation with the United States Treasury Department providing for its conducting compliance reviews (investigation of complaints received by the Office of Revenue Sharing alleging discrimination in the use of general revenue sharing funds in the State of South Carolina by recipient governments, their secondary recipients or their contractors) on the behalf of the Office of Revenue Sharing.

TO: James E. Clyburn
Commissioner
South Carolina State Human Affairs Commission

QUESTION PRESENTED:

Does the South Carolina State Human Affairs Commission have the authority to enter into a letter of cooperation with the United States Treasury Department providing for its conducting compliance reviews (investigation of complaints received by the Office of Revenue Sharing alleging discrimination in the use of general revenue sharing funds in the State of South Carolina by recipient governments, their secondary recipients or their contractors) on the behalf of the Office of Revenue Sharing?

STATUTES, CASES, ETC., INVOLVED:

§ 1-360.21, 1962 Code of Laws of South Carolina (as amended), City of Columbia vs. E. W. Ziegler, et al. (Master's Report C.A. #20734, June 21, 1974) (Order of Honorable John Grimbball, Judge of Fifth Judicial Circuit, July 26, 1974).

DISCUSSION OF ISSUES:

The powers and authority of the South Carolina State Human Affairs Commission are set forth in § 1-360.21, 1962 Code of Laws of South Carolina (as amended). Section 1-360.27. The pertinent Items under this Section are quoted in their entirety below.

(g) To seek the understanding and cooperation of or to enter into agreement with any existing or later-created councils, agencies, commissions, task forces, institutions or organizations, public or private, which are, in the judgment of the Commission, dedicated to the promotion of human rights and affairs.

(k) To cooperate with the United States Equal Employment Opportunity Commission created by the Civil Rights Act of 1964 (78 Stat. 241) in order to achieve the purposes of that act and with other Federal, State and local agencies and departments.

(n) To investigate problems in human affairs in the State and in connection therewith, to hold hearing, to request the attendance of persons who shall give testimony, to receive for the record of any such hearing written statements, documents, exhibits and other items pertinent to the subject matter of any such hearing, and following any such

investigation or hearing to issue such report and recommendations as in its opinion will assist in effectuating the purposes of this chapter.

(p) To issue a subpoena duces tecum and thereby compel attendance of witnesses or production for examination of books, papers, and records, whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the Commission. The power may be exercised only by the joint action of the chairman of the Commission and the Commissioner.

*2 It is clear that the United States Treasury Department is an existing agency under Item (g) and a Federal agency under Item (k). Item (g) gives the power to the Commission to enter into arguments with such entities in order to achieve the purposes of the Human Affairs Law. The investigating powers of the Commission are delineated in Items (n) and (p) and are self-explanatory.

With regard to case law it seems that the City of Columbia vs. E. W. Ziegler, et al. is not pertinent to the question here presented. This case involved a Declaratory Judgment action in which the Master in Equity held that a municipality is not subject to the broad investigatory powers of the Commission contained in § 1-360.29(d) but to be subject to the more limited powers contained in Item (e). The Master further found that since a municipality does not come under the categories of § 1-360.28 and that the discovery procedures provided for investigations under § 1-360.28 do not apply. ('... such discovery is not provided unless the petitioner is within 1-360.28.') (Masters Report C.A. #20734, June 21, 1974. (Emphasis added)).

By Order, the Honorable John Grimball, Judge of the Fifth Judicial Circuit accepted the Master's Report in its entirety.

This case involved individual questions of discrimination under § 1-360.27(o) only. The question here present involves the powers of the Commission to investigate problems in human affairs generally under Items (n) and (p). Therefore it is the opinion of this Office that the above case is not in point on this question.

It is obvious from the above that the South Carolina Legislature gave to the South Carolina State Human Affairs Commission has the power to enter into an argument with a Federal agency in order to achieve the purposes of the Human Affairs Law. The type of discrimination enumerated in the question is certainly within the type of conduct that the Commission desires to correct and cooperation with a Federal agency would seem to be a positive step in the advancement of the ideals for which the Human Affairs Law was promulgated.

Hutson S. Davis, Jr.
Assistant Attorney General

1975 S.C. Op. Atty. Gen. 194 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4120, 1975 WL 22416