

CIVIL RIGHTS COMMISSION AND MINORITY GROUPS STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
Second Session of the Sixty-fifth General Assembly
State of Iowa
1974

F I N A L R E P O R T

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Chapter 88, Acts of the Sixty-fifth General Assembly, 1973 Session, which appropriates funds to the Iowa Civil Rights Commission for the fiscal year commencing July 1, 1973 and ending June 30, 1974, mandates that the Legislative Council establish a study committee to study the present statutory duties of the Civil Rights Commission, and what changes, if any, should be made in these duties and the procedures by which these duties are discharged and also to determine whether the Commission's staff and funding are sufficient, excessive, or deficient to enable the Commission to properly perform the duties and meet the responsibilities assigned by law.

In addition to the duties spelled out in Chapter 88, the Legislative Council directed the study committee to study the problems of minority groups in Iowa.

The following persons were named by the Legislative Council to serve as members of the Civil Rights Commission and Minority Groups Study Committee:

Senator John S. Murray, Ames, Temporary Chairman
Senator Calvin O. Hultman, Red Oak
Senator Joan Y. Orr, Grinnell
Representative Ingwer L. Hansen, Hartley
Representative William J. Hargrave, Iowa City
Representative Carl V. Nielsen, Altoona
Representative David M. Readinger, Urbandale

At the organizational meeting of the Study Committee, Senator Murray was elected Chairman and Representative Hargrave was elected Vice Chairman.

The Civil Rights Commission is charged with investigating and resolving complaints alleging unfair or discriminatory practices based upon age, race, creed, color, sex, religion, national origin, or disability in matters of employment, housing (except sex and age), public accommodations (except age), and aiding and abetting discriminatory activity. The Commission is authorized to investigate complaints filed by an individual and on its own motion initiate patterns and practice complaints.

Patterns and practice complaints are initiated where no specific individual is involved and the charge is based upon statistical information received from the federal Equal Employment Opportunities Commission, comparison with other similarly situated industries, and relevant community knowledge of the establishment. The Civil Rights Commission receives information from the federal Equal Employment Opportunity Commission concerning the employment practices of all establishments in Iowa employing more than twenty-five persons. Employees investigating patterns and practice suits are paid under a contract with the federal government.

The Commission is also charged with planning and conducting educational and training programs designed to eliminate racial, religious, cultural, and intergroup tensions as well as to inform the public about the existence of discrimination.

At the time funds were appropriated for fiscal year 1973-74 by the General Assembly, there was a backlog of nearly 1,000 unresolved complaints, and the Civil Rights Commission was receiving criticism for its inability to expeditiously rule on complaints. The General Assembly had appropriated \$99,120 for the fiscal year ending June 30, 1973, and it increased the appropriation to \$187,530 for the fiscal year commencing July 1, 1973 in order to provide for additional staff to reduce the backlog of cases. No funds were appropriated for the fiscal year commencing July 1, 1974.

Following the adjournment of the General Assembly, and prior to the first meeting of the Civil Rights Commission and Minority Groups Study Committee, the Executive Director of the Civil Rights Commission, Mr. Alvin Hayes, Jr., announced his resignation and took a position with the State of Washington's Civil Rights Commission. As a result, when the Study Committee commenced its study, the position of Executive Director was vacant. There were also several other vacancies in the staff which would not be filled until a new Executive Director was named.

At its first meeting, the Committee reviewed the provisions of the law establishing the Civil Rights Commission, Chapter 601A of the Code, which except for the addition of new protected classes, remains relatively unchanged since its enactment in 1965. The Committee also heard from members of the staff and commissioner of the Civil Rights Commission as they explained the role of each in the performance of the functions of the Civil Rights Commission.

Subsequent to the first meeting of the Committee, the Commission named as Executive Director, Mr. Joseph L. Tate, a former employee of the Kansas State Civil Rights Commission. Mr. Tate met with the Committee for its remaining meetings and discussed his views about the operation of a civil rights commission as well as answering questions concerning procedures and practices. The counsel from the Attorney General's Office assigned to the Civil Rights Commission, Ms. Roxanne Conlin, also met with the Committee and provided answers to questions of the Committee members.

Persons presenting testimony before the Committee at its hearing were:

Mr. Leon Shearer, Civil Rights Subcommittee, Iowa State Bar Association

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Mr. John Phillips, Labor Law Section, Iowa State Bar Association
Mr. John Ely, Iowa Civil Liberties Union
Mr. Richard Pabon, Executive Director, Spanish-speaking Center
of Des Moines, Inc.
Ms. Peggy Pinder, Blind Student, Cornell College
Ms. Roxanne Conlin, Women's Political Caucus
Mr. Donald W. Wanatee, Mesquaki Indian Settlement
Mr. Charles Pushetonequa, Mesquaki Indian Settlement
Mr. Silas Ewing, Member, Parole Board, Director, Spence, Ewing
and Associates. Inc.
Ms. Mary Grefe, President, Iowa Division, American Association
of University Women
Ms. Evelyne Villines, Executive Secretary, Committee on Employ-
ment of the Handicapped
Ms. Diane Brandt, League of Women Voters
Mr. Allen Correll, Executive Director, Des Moines Human Rights
Commission
Ms. Alice McKee, Executive Director, Commission on the Status
of Women
Mr. William H. Schultz, Commission on Aging
Mr. Charles Toney, Chairman, Iowa Manufacturers Association
Human Relations Committee
Mr. Kenneth Jernigan, Director, Commission for the Blind

The Committee reviewed all suggestions made by the Commission, the Executive Director of the Commission, the Commission's legal counsel, and by persons appearing at the hearing. After debate and discussion, the Committee came to the following conclusions concerning the suggestions:

1. Subpoena power during the investigatory stage. The Civil Rights Commission currently possesses the power to obtain evidence through subpoenas only at the public hearing stage. The Committee recommends that legislation be enacted to grant the Civil Rights Commission the power to subpoena books, papers, and records relating to matters involved in a complaint after the respondent has been properly notified of the charges. Granting the subpoena power at an earlier stage will make it easier for the Commission to obtain needed information from respondents.

Correspondence has been received by the Iowa Civil Rights Commission from the federal Equal Employment Opportunities Commission which indicates that federal funds may be withheld from state civil rights commissions which do not have powers which are substantially the same as those held by the federal Equal Employment Opportunities Commission. Since the federal Equal Employment Opportunities Commission does have subpoena power at the investigatory stage, it is felt that the absence of a similar power by the Iowa Civil Rights Commission may cause it to lose a portion of its federal funds.

2. De novo review. Present Iowa law requires that appeals taken from a ruling of the Iowa Civil Rights Commission be tried in a de novo proceeding. When a case is tried de novo, the court may reexamine the testimony and other evidence presented before the Commission, hear new evidence and testimony not presented before the Commission, and reach a decision independent of the findings of the Commission. Testimony received by the Study Committee indicates that as a result, some respondents do not fully and fairly litigate the issues before the Commission. Some members of the Study Committee are of the opinion that requiring de novo review of Commission rulings evinces a mistrust of the Commission by the General Assembly. The Study Committee recommends that legislation be enacted that would delete the de novo review requirement.

3. Temporary injunctions. The Civil Rights Commission does not currently possess the power to obtain temporary injunctions. In order that the Civil Rights Commission may take immediate action on a complaint, the Committee recommends that legislation be enacted to grant the Civil Rights Commission the authority to seek an ex parte injunction valid for a reasonable length of time as determined by the court.

4. Patterns and Practice Suits. The Civil Rights Commission has been criticized for initiating patterns and practice complaints on its own motion against an organization or establishment for systemic discrimination. Members of the Civil Rights Commission and its staff testified that it is necessary that it retain the authority to initiate patterns and practice complaints. The testimony indicated that when an employer has the reputation for not hiring members of minority groups, members of the minority group will not apply for a position with the employer, and thus, will not have standing to file a complaint with the Commission. The testimony also indicated that in some cases employees are reluctant to file a complaint because of possible reprisals or are simply unaware that they are the subject of discriminatory practice. The Committee recommends that the Civil Rights Commission continue to be authorized to bring patterns and practice suits.

5. Confidentiality of information. The Civil Rights Commission is required to keep information concerning a complaint confidential unless a disclosure is made in connection with the conduct of the investigation. Criticism was directed at the Commission that the parties involved are not able to obtain information as to the status of their cases. The Executive Director assured the Committee that the complainant and respondent and their counsels are being provided with information concerning the status of their case.

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6. Time limits. The law and the rules of the Civil Rights Commission do not specify time limits for completion of a case. The Committee believes that time limits should not be mandated by statute, but should be incorporated as part of the Commission's rules. However, in view of the tremendous backlog of cases, the Committee does not recommend the adoption of time limits by the Commission until such time as the backlog has been eliminated and the Commission is sufficiently staffed so that it will be able to commence its investigation promptly upon filing a complaint.

7. Punitive damages. The law does not currently allow the Commission to request the court to award damages. The Committee does not recommend that the Commission be given the authority to request the court to award punitive damages. It believes that an individual who is aggrieved by a decision of the Commission can retain private counsel to represent the individual in a suit for punitive damages.

8. Employment of protected groups. The Civil Rights Commission is utilizing an affirmative action program of its own and is attempting to employ members of protected minorities. Recently a disabled person and a native American were employed and a Spanish-speaking person will be employed.

9. Prohibit sex discrimination in housing. The Committee recognizes that a bill (Senate File 487) to prohibit sex discrimination in housing passed the Senate during the 1973 legislative session and is awaiting action in the House of Representatives. The Committee recommends that the bill be passed by the house during the 1974 session.

10. Increase cooperation between the Civil Rights Commission and local human rights or civil rights commissions. The Committee recommends that legislation be enacted to allow the Civil Rights Commission to defer cases to approved local human rights commissions if the local commission has powers and remedies similar to those of the Civil Rights Commission and the local commission has the available staff to investigate the complaint.

11. Selection of hearing officers. Criticism was directed at the method of selection of hearing officers. The Executive Director has indicated that the Civil Rights Commission is in the process of promulgating rules relating to the use and selection of hearing officers. The Committee endorses the work of the Uniform Administrative Procedures Act Subcommittee on this subject.

12. Suspension or revocation of licenses. The Committee recommends that legislation be enacted to provide the Civil Rights Commission with the authority to appear before a licensing agency

and recommend the suspension or revocation of a license issued by that agency after the licensee has been found guilty of violating the Civil Rights Act.

13. Sex of the members of the Civil Rights Commission. The Committee recommends that legislation be enacted which would prohibit more than four members of the same sex from being members of the Civil Rights Commission at the same time.

14. Sex discrimination in education, insurance, credit, and banking. From testimony presented to the Committee during its hearing, the Committee recognizes that discrimination on the basis of sex is present in education, insurance, credit, and banking, and there appears to be a need for legislation in these areas. However, the Committee did not have sufficient time to obtain testimony from affected groups. The Committee recommends that the appropriate standing committees hold hearings and draft legislation to eliminate such discrimination.

15. Recovery by the plaintiff. The Committee recommends that section 601A.9, subsection 1, unnumbered paragraph 2, of the Code be stricken. The paragraph was applicable when the filing of a complaint had to be accompanied by a bond. It allows the plaintiff to recover in any action against the bond if he shows that there was no reasonable cause to believe the ground upon which the complaint was made.

16. Appropriation for 1974-1975. The Committee believes that because of the backlog of cases, and the attempts by the staff of the Civil Rights Commission to reduce this backlog, that increased funding may be necessary. The Committee asks the Civil Rights Commission to consider the recommendations of the Committee and to evaluate them in terms of funding and to appear before the State Departments Subcommittee of the Joint Committees on Appropriations with a budget request for the next fiscal year. The Committee asks the Subcommittee to carefully review the budget request of the Civil Rights Commission.

17. Problems of Indians and Spanish-Speaking People. The Committee heard testimony regarding the unique problems of both Indians and Spanish-speaking people and realizes that these problems require special attention. It recommends that funds be appropriated to the Office for Planning and Programming for two study commissions and that legislation be drafted to require the Office for Planning and Programming to establish two separate commissions composed of affected personnel and the general public, staffed by the Office for Planning and Programming, to conduct a one-year study of the problems of Indians and Spanish-speaking people, respectively, and to report these problems, together with recommendations to the General Assembly.

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18. Continuation of Study. The Civil Rights Commission and Minority Groups Study Committee believes that the Civil Rights Commission and its staff are working hard to reduce the backlog of cases and to increase the efficiency of the Civil Rights Commission. The Committee requests the Legislative Council to approve the appointment of a legislative committee composed of members of the General Assembly who are knowledgeable about the operation of the Civil Rights Commission to meet during the next interim with the Civil Rights Commission and its staff to review progress.

Copies of bill drafts to implement the recommendations of the Committee are attached to this Report.

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the respondent's statutory right to re-
2 cover damages from the civil rights commission.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4 Section 1. Section six hundred one A point nine (601A.9),
5 subsection one (1), Code 1973, is amended to read as follows:

6 1. Any person claiming to be aggrieved by a discrimina-
7 tory or unfair practice may, by himself or his attorney, make,
8 sign, and file with the commission a verified, written com-
9 plaint in triplicate which shall state the name and address
10 of the person, employer, employment agency, or labor organi-
11 zation alleged to have committed the discriminatory or unfair
12 practice of which complained, shall set forth the particulars
13 thereof, and shall contain such other information as may be
14 required by the commission. The commission, a commissioner,
15 or the attorney general may in like manner make, sign, and
16 file such complaint.

17 ~~In an action the plaintiff may recover, if he shows that~~
18 ~~there was no reasonable cause to believe the ground upon which~~
19 ~~the complaint was made, the actual damages sustained and rea-~~
20 ~~sonable attorney fees to be fixed by the court.~~

EXPLANATION

21
22 This bill provides for the deletion of respondent's statu-
23 tory right to recover damages from the Civil Rights Commission
24 if there is no reasonable ground on which to believe the com-
25 plaint.

SENATE FILE _____

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the membership, powers, and duties of the
2 civil rights commission.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. Section six hundred one A point three (601A.3),
2 unnumbered paragraph one (1), Code 1973, is amended to read
3 as follows:

4 The Iowa state civil rights commission shall consist of
5 seven members appointed by the governor with the advice and
6 consent of the senate. Appointments shall be made to pro-
7 vide geographical area representation insofar as may be
8 practicable. No more than four members of the commission
9 shall belong to the same political party or be of the same
10 sex.

11 Sec. 2. Section six hundred one A point five (601A.5),
12 Code 1973, is amended by adding the following new subsec-
13 tions:

14 NEW SUBSECTION. To issue subpoenas for books and papers
15 relating to any matters involved in the complaint, after the
16 respondent has been notified of the complaint as provided
17 for in section six hundred one A point nine (601A.9), sub-
18 section three (3) of the Code. The commission shall issue
19 subpoenas in behalf of the respondent in the same manner and
20 for the same purposes. If a party either fails or refuses
21 to obey a subpoena issued by the commission, the commission
22 may petition the district court having jurisdiction for is-
23 suance of a subpoena and the court shall in the proper case
24 issue the subpoena. A person refusing to obey the subpoena
25 issued by the court shall be subject to punishment for con-
26 tempt.

27 NEW SUBSECTION. To seek a temporary injunction against
28 a respondent when it appears that a complainant may suffer
29 irreparable hardship as a result of an alleged violation
30 of chapter six hundred one A (601A) of the Code.

31 NEW SUBSECTION. To defer a complaint to a local civil
32 rights commission under commission rules promulgated pur-
33 suant to chapter seventeen A (17A) of the Code.

34 Sec. 3. Section six hundred one A point ten (601A.10),
35 Code 1973, is amended by striking subsection five (5).

