

Approved 2-12-90
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at
Chairperson

1:35 ~~am~~ ^{XX}/p.m. on February 5, 1990 in room 531-N of the Capitol.

All members were present except: Senator Doyen - Excused
Senator Moran - Excused

Committee staff present: Julian Efird - Research
Fred Carman - Revisor
Scott Rother - Research

Conferees appearing before the committee: Lou Ann Thoms - Civil Rights Commission

A motion was made by Senator Vidricksen to approve minutes of January 21, 29 (as corrected), and 30; seconded by Senator Gaines. Motion carried.

Hearing on: SB 490 - Kansas Sunset Law; Commission on Civil Rights

Lou Ann Thoms introduced members of the Civil Rights Commission present for the hearing and related the composition of the Board. The enabling legislation for the Commission was reviewed and the process for handling complaints was explained in detail. Only Commission members can determine if there is probable cause and make a final determination on complaints. The Commission cannot award punitive damages and supervisors are responsible for the conciliation process, the outcome of which determines if a hearing is to be held. Sources of federal funds are the Equal Employment Opportunity Commission (EEOP) and the U.S. Department of Housing and Urban Development. There is concern about the possible reduction loss of a HUD contract this year. A centralization procedures has been activated with the Topeka and Wichita offices for improving the complaint process and efficiency of handling.
(Attachment 1)

Committee members discussed backlogs of complaints, the won and loss ratio and budget requirements. It was noted that the backlog times for determination of judgements was shortened considerably in the past two years.

Discussion on:

SB 366 - Concerning the open records act

Senator Vidricksen stated the subcommittee studying SB 366 determined that records did not need to be opened up as the four day rule would apply and this legislation is not needed.

A motion was made by Senator Vidricksen to recommend SB 366 adversely;
seconded by Senator Bogina. Motion carried.

Chairman Oleen told the Committee that she had held a discussion with Representative Walker regarding review of other Boards. Both felt hearings should be held on the sunset review of the Board of Pharmacists, Dental Board and Board of Examiners in Optometry.

A motion was made by Senator Bogina to introduce 9RS 2291, 9RS 2287 and 9RS 2290;
seconded by Senator Francisco. Motion carried.

Meeting adjourned. The next meeting will be February 6, 1990.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE 2/5/90

NAME	COMPANY / ORGANIZATION	ADDRESS
Grouse Hunt	KCCR	Landon Bldg
Lon Ann Thomas Commission	KCCR	Topeka
Robert G. Lay	KCCR	Landon Bldg
Barry L. Steyer	KCCR	" " "
JOE Rickabaugh	Ks. Livestock Assoc.	Topeka
A. G. Weenink	KCCR	8619 W. 68th St Overland Park, Ks 66204
Meg Henson	Intern - Sen. O'Leary	Topeka

Love Ann

KANSAS COMMISSION ON CIVIL RIGHTS

Commissioner

SUMMARY OF AGENCY OPERATIONS

There are seven (7) Commissioners appointed by the Governor and approved by the Senate. The Commissioners are required by law to be appointed on the basis of two (2) representatives of labor, two (2) representatives of industry, (1) representative from the real estate industry, one (1) member who is eligible to practice law in Kansas and one (1) member at large. The Commissioners make policy for the agency and make determinations on alleged acts of discrimination. They have authority to serve as a hearing panel. Commissioners appoint the executive director and the hearing examiner of the agency.

*S.G.O.
ATTACH 1
2/5/90*

KANSAS COMMISSION ON CIVIL RIGHTS
HEARING ON SENATE BILL NO. 490
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE
FEBRUARY 5, 1990

The enabling legislation for the Commission consists of two acts, the Kansas Act Against Discrimination and the Kansas Age Discrimination in Employment Act.

The Kansas Act Against Discrimination protects anyone who feels they have been discriminated against on the basis of race, sex, national origin, ancestry, color, religion or physical handicap in employment, housing or public accommodations. The Kansas Age Discrimination in Employment Act protects anyone who feels they have been discriminated against in employment opportunities because of their age. These two laws, provide protection for each and every Kansan against discrimination.

The Commission has two (2) offices, the main office in Topeka and a satellite office in Wichita. Thirty of the forty staff members are in the Topeka office, and the remaining ten are housed in Wichita.

The process for filing a complaint begins by a contact being made with either of the two offices. The Commission has an intake division which assists individuals in understanding whether their complaint falls under the jurisdiction of the Commission. No determination is made at this point on

the validity of a complaint, only whether it falls under the protected bases for filing and that the alleged incident did occur in Kansas. Once those facts have been determined, the intake section assists the individuals in the preparation of the complaint. It is then signed before a notary and docketed by our agency. Some complaints are received directly from attorneys offices and are ready for immediate docketing.

Once a complaint is properly docketed, it is placed in the Preliminary Investigative Conference Backlog. The Preliminary Investigative Conference is a process in which early resolution of complaints are attempted. It is voluntary, and either the Complainant or the Respondent may refuse to go through the process. However, if they both agree, then a Preliminary Investigative Conference is held. The Commission attempts to conduct such conferences within sixty days from the time the complaint is docketed. The conference is conducted by one of the PIC investigators who sits with both parties in an attempt to resolve the complaint at that time. In FY '89, 47.8% of cases closures went through the PIC process; 53.9% of those cases were resolved at that level.

This particular procedure assists the agency in processing cases expeditiously. During FY '89 the agency had 1,349 complaints filed. One hundred and eighty (180) of these wwere filed in one month alone. This is the highest number of

complaints ever filed and has caused the backlog which was at its lowest ever in Fiscal Years 1986, 1987 and 1988 to begin to climb again. Therefore, any complaint which can be resolved at an early stage, allows the staff to concentrate more on reducing the number of complaints waiting full investigation. Any case which has not been assigned to an investigator is considered to be part of the backlog.

Most of the complaints processed by the agency allege discrimination in employment, i.e., 94% of all complaints filed in FY '89 were employment complaints. This is approximately the norm each year with employment complaints always being at least 90% and above of all complaints filed.

The procedure for investigating any complaint which goes to full investigation is a process of gathering evidence; interviews, records, on-site visits and then analyzing that evidence. Once an investigator has gathered all relevant evidence, analyzed it, he or she summarizes that information and makes a recommendation.

The supervisor reviews the complete case file and accepts the investigation as complete or asks for additional information.

When the case is considered complete by the supervisor, the summary and recommendation are sent to one of the seven commissioners appointed by the Governor so that a determination can be made of cause or no probable cause. Only commissioners can make the final determination. They have the latitude to accept or reject the recommendation made by the investigator, and to make a determination which may be different. Commissioners spend many volunteer hours reading case summaries and rendering determinations.

In order for a case to be determined probable cause to believe that the incident which is being alleged did occur there must be a preponderance of evidence to support the allegation. When a commissioner determines probable cause, the case is sent back to the supervisor of the specific investigative unit to attempt conciliation. The supervisor is responsible for bringing the parties involved toward some acceptable form of remedy.

The Commission's supervisors have strong conciliation skills which result in successful conciliation many times in providing remedies to the Complainant without the case having to go to the public hearing stage. The Commission cannot award punitive damages. Conciliation efforts concentrate on lost pay or other losses and on any pain, suffering and humiliation which may have occurred.

If a case determined probable cause fails in conciliation, it is forwarded to the legal division of the agency for review. It is the responsibility of the legal staff to review the case and to determine if, in their opinion, the evidence is strong enough to sustain a public hearing. On rare occasions, legal may recommend administrative closure of the case due to legal's opinion that the case is not strong enough in its evidence to sustain and prevail at a public hearing. A commissioner must sign off on a case being administratively closed if a probable cause determination has been made.

When cases go to public hearing, the Commission is responsible for representing the Complainant unless the Complainant chooses to employ private counsel.

Although the hearing examiner is employed by the Commission, he maintains autonomy both in location and in his impartial hearing of a case when it is presented before him.

Once he has heard a case, a transcript is produced, and both the Complainant and Respondent, through their attorneys, usually have thirty days to file proposed findings of fact and conclusions of law for the hearing examiner's consideration. It is after this time that the hearing examiner, acting as judge, makes his findings of fact and presents those findings and a proposed order to the Commissioners for their consideration. The

Commissioners then review what has been presented to them. They may approve the order proposed by the hearing examiner, or they may choose to modify it or reject it totally, and write an order which differs from that recommended by the hearing examiner.

Once the Commissioners have issued an order, both sides have ten days to submit a request for a rehearing. Unless some new evidence is shown to be available through their request for a rehearing such requests are usually denied by the Commissioners. After denial of a rehearing request, either party may appeal the decision of the Commission by initiating Court proceedings.

Over the past five years, the number of complaints being closed by the agency are:

FY ' 85	1,119
FY '86	1,177
FY '87	1,367
FY '88	1,083
FY '89	1,107

Just as monetary awards vary due to the specifics involved in each complaint, annual closures vary as well due to the amount of time required based on the complexities involved in each investigation. The annual average of closures is 1,170 complaints. Thoroughness in investigations is necessary so that

both the Complainant and Respondent receive the most neutral and fair investigation possible.

Over the past twenty years, civil rights law has evolved into a scientific methodology based on case law. In looking at the evidence gathered, this scientific methodology provides sound basis for decisions made by this Commission. Due to the specificity involved in the laws governing decisions, the Commission has increased its training efforts for investigators and supervisory staff.

The Commission is also required by law to educate the public on discrimination law and how discrimination can be avoided in the workplace, in housing and in public accommodations.

The Commission has one staff member responsible for educating the entire population of the state on civil rights law. Currently, the individual in this position is expected to provide workshops, training and resource information to any group, agency or organization in the state who makes such a request. At the same time, this one individual must develop all of the educational materials which are disseminated by the Commission.

The Kansas Commission on Civil Rights receives federal funds from two sources, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). This money is received for cases which are first filed with the Kansas Commission on Civil Rights and later filed with one of these two federal agencies. In reality, the federal government is paying state agencies to do work which the state agency would be required to do by state statute anyway. State and local civil rights agencies definitely benefit from such federal contracts, but should not become dependent upon them for their survival or existence. In fact, there is a stipulation in the federal contracts to this effect.

The largest federal contract the agency has is with EEOC. EEOC pays \$400 for the completion of each complaint which has been filed with both agencies. HUD pays \$650 for each complaint completed. Numbers of cases vary from year to year in both contracts and the determinations of the size of contract is decided by the federal agency, usually contingent upon the previous year's performance but this decision is also based on the amount of federal funds available to be split among the state and local civil rights agencies. For instance, in this fiscal federal year, the Gramm-Rudman stipulations became operative at the federal level, and EEOC had to re-adjust its calculations. The agency just received its contract to sign, although a quarter of the federal year has already expired. In FY '89, the agency

received \$361,830 in federal funds or 32% of its total funds in federal dollars.

There was a time when the agency had a large reserve of federal funds, as it was less dependent upon using federal money. However, this changed during the recession years when the Budget Office recommended the spending down of this reserve. In FY '87, a large spend-down of federal funds occurred, with the agency budget actually being comprised of 46% federal funds. This in essence depleted any federal reserve the agency had, and has caused the agency to be in the position of relying on the arrival of a federal deposit right at the end of the state fiscal year in order to meet its last payroll. When there was some reserve, in the federal account, if a federal deposit was late in arriving, there were enough funds available to meet payrolls and other necessary expenditures. This present situation, without such a reserve of federal funds, is very difficult for the agency.

The one major legislative concern this year is housing legislation that was introduced last year, HB 2084. When the federal government amended its housing legislation in March of last year to protect familial status and the handicapped, both physical and mental, it gave state and local agencies forty (40) months to bring their legislation into conformance or lose their contracts with HUD. Although hearings were held on this

legislation last year, the bill is still in Committee. Loss of the HUD contract would mean at least \$35,000 less in federal funds each year.

Since 1986 a number of management initiatives have been implemented to improve case processing, monitoring and tracking.

Beginning July 1, 1988, a senior investigator was assigned as Intake Manager of the Intake Section. This Manager also prepares an initial request for records and documents to be served upon the Respondent at the time the complaint is served. This procedure has greatly enhanced the timely receipt of investigative information. This Intake Manager also completes special investigative work and preliminary inquiries on requests for Commission initiated complaints.

We have also centralized the complaint docketing procedure in the Topeka office, to include a consolidated complaint number system. In conjunction with this, we have also consolidated the backlog in the Topeka office, instead of maintaining separate backlogs and numbering systems for the Topeka and Wichita offices. All case assignments are now made from the Topeka office. We have completed the computerized case monitoring system which includes the necessary hardware in the Wichita office to feed information to the main data base in Topeka. A Secretary II was upgraded to Office Specialist to manage the

data base. Finally, we have developed new performance and evaluation standards for investigators and supervisors.

Management continues to search for new methods to process cases more effectively and efficiently.