

Opinion No. 60-79

May 4, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Don L. Coppock, Director Fair Employment Practice Commission P. O. Box 1726
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QUESTION

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1. Does the Fair Employment Practice Commission have jurisdiction over cases arising from the New Mexico Civil Rights Act, §§ 49-8-1 through 49-8-6, N.M.S.A., 1953 Comp. (P.S.)?
2. Are the rights created by the said Civil Rights Act enforceable, even though no specific remedy is set forth in the statute?

CONCLUSIONS

1. No.
2. See analysis.

OPINION

{*439} ANALYSIS

The New Mexico Fair Employment Practice Commission is a purely statutory agency. Since it was created by statute (§§ 59-4-1 through 59-4-14, N.M.S.A., 1953 Comp.), it has only such powers, duties and jurisdiction as it was granted by statute. The powers and duties of the Commission are set out with reasonable specificity in § 59-4-8 of the statute and jurisdiction over cases arising from the application of the Civil Rights Act (§§ 49-8-1 through 49-8-6, N.M.S.A., 1953 Comp. (P.S.)), cannot reasonably be inferred therefrom. It is our conclusion that the civil rights jurisdiction of the Commission extends only to cases wherein unfair and discriminatory **employment** practices are alleged.

Although the Commission plays no direct part in the administration of said Civil Rights Act, it is reasonable to expect that in its advisory and educational capacity the Commission will be interested in the enforceability of said Act.

The New Mexico Supreme Court has not yet been called upon to construe the Civil Rights Act and to determine the methods by which it may be enforced. Since neither the Fair Employment Practice Commission nor any other non-judicial agency of state

government is charged with the administration of this law and since any available remedy would be purely private in nature, it would be inappropriate at this time for this office to rule upon the question of what remedies are available to those injured by violation of the statute. However, a general discussion of the problem should be of some assistance to the Commission in its investigation and research in the broad area of discrimination.

A review of civil rights statutes enacted by the states reveals that they are varied in form and substance. Some such statutes impose criminal liability upon those who, in violation of such statutes, discriminate against an individual for the proscribed or prohibited reasons. Others specifically grant the aggrieved person the right to recover a specified forfeiture or penalty, or damages in the nature of a forfeiture, from the person violating the statute. Still others provide specifically for a private action for damages. The New Mexico {*440} statute must be placed in still another category, including those statutes which declare discrimination to be unlawful but do not provide a statutory remedy, either criminal or civil.

The fact that the New Mexico Civil Rights Act provides no statutory remedy does not preclude the possibility that an injured person may be entitled to a civil action for damages. A provision in a state constitution or statute forbidding discrimination has been deemed, by the courts of other states, to confer a substantial right for the violation of which a civil action for damages is maintainable. This right has been justified under the general rule that when a statute imposes upon any person a specific duty for the protection or benefit of others, neglect or refusal to perform the duty creates a liability for any resulting injury or hurt of the kind which the statute was intended to prevent. As stated at 171 ALR 920, "While there is some authority to the contrary, in most of the cases in which the question has arisen, the view has been taken that a person aggrieved by the violation of a civil rights statute is entitled to pursue a remedy which will effectively reimburse him for, or relieve him from the effects of the violation, or protect against further violations, **notwithstanding the statute did not expressly give him such right or remedy.**" (Emphasis Added).

We do not feel that it would be advisable to pursue this analysis further. It should suffice to say that it appears likely that civil rights violations may be remedied in some manner in New Mexico. The determination of specific rights and remedies is more properly within the province of the courts as the same are presented by private litigants.

By: F. Harlan Flint

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