Opinion No. 60-99

May 31, 1960

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

TO: Don L. Coppock, Director Fair Employment Practice Commission P. O. Box 1726 Santa Fe, New Mexico

QUESTION

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Does the "Fair Employment Practices Act" prohibit an employer from requiring his employees to speak only English either among employees or with customers, to the exclusion of any other language?

CONCLUSION

See Analysis.

OPINION

*{*467}* **ANALYSIS**

A categorical answer of yes or no cannot be given to the question herein considered. Instead, the facts of each case presented to the Commission must be examined to determine whether the particular employer's policy or actions meet the standards imposed by the "Fair Employment Practices Act," compiled in §§ 59-4-1 through 59-4-14, N.M.S.A., 1953 Compilation.

Section 59-4-1 (b) declares it to be "the public policy of this state to foster the employment of all persons in accordance with their fullest capacities, regardless of their race, color, religion, national origin or ancestry, and to safeguard their right **to obtain and hold employment without such discrimination".** (Emphasis added).

The above - quoted language states the announced public policy in general terms. More specific and decisive language bearing upon the issue presently under consideration is found in Section 59-4-4 where it is declared to be an unlawful employment practice:

"A. For an employer, by himself or his agent, because of the race, color, religious creed, national origin or ancestry of an individual to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation **or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification."** (Emphasis added.)

It is the opinion of this office that a rule requiring employees to speak only English during working hours would constitute an unfair employment practice as defined by the Act, unless such rule is based upon a **bona fide occupational qualification.** It should be clear from the conclusion expressed here that the finding of an unlawful employment practice cannot be based upon the isolated fact that the employer requires that English only be spoken. The action to be taken by the Commission in each specific case of this type will be governed by a determination of whether the complained of policy is based upon a bona fide occupational qualification. Before the Commission may move to condemn a particular employer, it should first be determined that there is in fact such a language requirement in effect and also that such requirement does not have a legitimate business or occupational purpose.

By: F. Harlan Flint

Assistant Attorney General