

## Opinion No. 73-55

July 30, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Charles Rudolph Executive Director Human Rights Commission of New Mexico  
Villagra Building Santa Fe, New Mexico 87501

### QUESTIONS

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Under the doctrine of preemption does the 90-day statute of limitation of Section 4-33-9A of the New Mexico Human Rights Act of 1969 now become 180 days as per Title VII of the Civil Rights Act?

#### CONCLUSION

No.

### OPINION

#### {\*110} ANALYSIS

On March 24, 1972, Title VII of the Civil Rights Act of 1964 was amended to provide that a charge filed under the section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred. 42 U.S.C. § 2000e -- 5(e).

Although Section 4-33-9(A) of the New Mexico Human Rights Act sets forth only a 90-day statute of limitation, we see no preemption doctrine question with the two different limitation periods because 42 U.S.C. § 2000e -- 5(e) makes the following exception:

{\*111} "except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a state or local agency with authority to grant or seek relief from such practice . . . such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the state or local agency has **terminated** the proceedings under the state or local law, whichever is earlier . . ." (Emphasis added)

The United States Court of Appeals, Tenth Circuit, in **Dubois v. Packard Bell**, No. 72-133, December 18, 1972 (5 EPD 8083), responded to whether the New Mexico Human Rights Commission's rejection of a complaint because such complaint was not timely filed under state law, was a "termination" of proceedings within the meaning of Subsection 706(d) so as to allow the plaintiff to qualify for the extended federal filing

period. The complaint was filed 144 days after the alleged discriminatory act. The court held that plaintiff's failure to file within the time set forth in Section 4-33-9(A), N.M.S.A., 1953 Comp. (1971 P.S.), did indeed deprive the New Mexico Human Rights Commission of a bona fide opportunity to consider or act upon the complaint, and thus refused to allow the complainant to rely on the resultant rejection as a "termination" of state proceedings within the meaning of subsection 706(d), so as to enable the complainant to invoke the extended federal filing period. The Court in **Dubois** made no reference to any question regarding preemption and made no ruling on such an issue.

Thus, unless and until the Legislature of the State of New Mexico determines it necessary or advisable to do so, we see no provision in federal law requiring that the state adopt a 180-day statute of limitations for cases filed pursuant to the Human Rights Act.

By: Leila Andrews

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