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Municipal Fair Employment Practices Ordinances and Commissions: A Legal Survey and Model Ordinance

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NOTE

Municipal Fair Employment Practices Ordinances and Commissions: A Legal Survey and Model Ordinance

I. Introduction

Fair employment legislation in the United States has been established in recent years on the federal, state, and local levels of government. While a veritable horde of legal scholars have debated and discussed the legislation


enacted by the federal and state governments, municipal ordinances, perhaps the most effective preventive of unfair employment practices within many of the nation's cities, have not received the attention they properly merit. This Note is undertaken with hopes of rectifying this deficiency by providing an insight into the structure, functions, merits, and weaknesses of municipal fair employment practices [FEP] ordinances and the commissions administering them. The information presented in this Note is largely the product of original research derived from a study of the FEP ordinances currently enforced in the nation's 134 cities whose populations exceeded 100,000 in 1960. Additional Ordinance 395, July 7, 1969; Pittsburgh, Pa., Ordinance 75, Feb. 28, 1967; Nashville and Davidson County, Tenn., Substitute Bill No. 58-494, July 5, 1968; Madison, Wis., General Ordinances § 3.23 (1967). The twenty-four cities enacting these ordinances and codes comprise all the cities in the nation with populations exceeding 100,000 that have adopted FEP ordinances of general application.


An interesting argument has been advanced by Milton Friedman, one of the nation's leading economists. Mr. Friedman has unequivocally proclaimed all FEP laws and commissions to be unnecessary. His argument for such condemnation, basically, is that an employer who hires only members of one race, religion, or color is limiting his source of supply and will generally have to pay a higher price than will an employer who does not discriminate. In a free market, such the discriminating employer would tend to be driven out. M. FRIEDMAN, CAPITALISM AND FREEDOM 111-17 (1962).

5 Twenty-four of these cities were found to have enacted municipal FEP ordinances. These cities and their respective FEP ordinances are listed in note 3 supra. The following 110 cities were included in the survey and were found to have no ordinances that generally ban discrimination in employment:

<table>
<thead>
<tr>
<th>ALABAMA</th>
<th>FLORIDA</th>
<th>MASSACHUSETTS</th>
<th>NEW YORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birmingham</td>
<td>Jacksonville</td>
<td>Boston</td>
<td>Albany</td>
</tr>
<tr>
<td>Mobile</td>
<td>Miami</td>
<td>Cambridge</td>
<td>Buffalo</td>
</tr>
<tr>
<td>Montgomery</td>
<td>St. Petersburg</td>
<td>Dorchester</td>
<td>Niagara Falls</td>
</tr>
<tr>
<td>ARKANSAS</td>
<td>Tampa</td>
<td>New Bedford</td>
<td>Rochester</td>
</tr>
<tr>
<td>Little Rock</td>
<td>Georgia</td>
<td>Springfield</td>
<td>Syracuse</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>Atlanta</td>
<td>Worcester</td>
<td>Utica</td>
</tr>
<tr>
<td>Anaheim</td>
<td>Columbus</td>
<td>MICHIGAN</td>
<td>Yonkers</td>
</tr>
<tr>
<td>Berkeley</td>
<td>Savannah</td>
<td>Dearborn</td>
<td>NORTH CAROLINA</td>
</tr>
<tr>
<td>East Los Angeles</td>
<td>Hawaii</td>
<td>Detroit</td>
<td>Charlotte</td>
</tr>
<tr>
<td>Fresno</td>
<td>Honolulu</td>
<td>Flint</td>
<td>Greensboro</td>
</tr>
<tr>
<td>Glendale</td>
<td>ILLINOIS</td>
<td>Grand Rapids</td>
<td>Winston-Salem</td>
</tr>
<tr>
<td>Long Beach</td>
<td>Chicago</td>
<td>Lansing</td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Peeria</td>
<td>MISSISSIPPI</td>
<td></td>
</tr>
<tr>
<td>Oakland</td>
<td>Rockford</td>
<td>Jackson</td>
<td>OHIO</td>
</tr>
<tr>
<td>Pasadena</td>
<td></td>
<td>MISSOURI</td>
<td>Akron</td>
</tr>
<tr>
<td>Sacramento</td>
<td></td>
<td>Kansas City</td>
<td>Cincinnati</td>
</tr>
<tr>
<td>San Diego</td>
<td>Evansville</td>
<td>NEBRASKA</td>
<td>Columbus</td>
</tr>
<tr>
<td>San Francisco</td>
<td>Fort Wayne</td>
<td>Lincoln</td>
<td>Toledo</td>
</tr>
<tr>
<td>San Jose</td>
<td>Hammond</td>
<td>Omaha</td>
<td>OKLAHOMA</td>
</tr>
<tr>
<td>Santa Ana</td>
<td>Indianapolis</td>
<td>NEW JERSEY</td>
<td>Oklahoma City</td>
</tr>
<tr>
<td>Torrance</td>
<td>KANSAS</td>
<td>Camden</td>
<td>Tulsa</td>
</tr>
<tr>
<td>Van Nuys</td>
<td>Kansas City</td>
<td>Elizabeth</td>
<td>OREGON</td>
</tr>
<tr>
<td>COLORADO</td>
<td></td>
<td>Jersey City</td>
<td>Portland</td>
</tr>
<tr>
<td>Denver</td>
<td>Topeka</td>
<td>Newark</td>
<td></td>
</tr>
<tr>
<td>CONNECTICUT</td>
<td></td>
<td>Paterson</td>
<td>PENNSYLVANIA</td>
</tr>
<tr>
<td>Bridgeport</td>
<td>Wichita</td>
<td>Trenton</td>
<td>Scranton</td>
</tr>
<tr>
<td>Hartford</td>
<td>Baton Rouge</td>
<td>NEW MEXICO</td>
<td></td>
</tr>
<tr>
<td>Waterbury</td>
<td>New Orleans</td>
<td>Albuquerque</td>
<td>PROVIDENCE</td>
</tr>
</tbody>
</table>
information was gathered by use of a survey that was distributed to the commissions established to administer FEP ordinances in those cities and from other materials furnished and comments contributed by the various commissions.

II. Legislative Activity at the Municipal Level

The first, and perhaps least expected discovery derived from the survey was that not all or even a major portion of the country's largest cities have enacted FEP ordinances. Rather, only twenty-four cities, or less than one-fifth of those surveyed, prohibit discrimination locally.

The reason for such a magnificent display of legislative inactivity at the local level can in no way be attributed to interference from Washington. Indeed, the primary federal FEP law, Title VII of the Civil Rights Act of 1964, expressly provides that "[n]othing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State." Moreover, section 709(b) of the Act specifically allows for federal utilization of local FEP commissions to enforce the federal law in some instances.

State legislation has, however, formed a more imposing barrier to the enactment of FEP ordinances at the municipal level. Generally, in order for a municipality to enact a valid and enforceable FEP ordinance, three basic tests must be met: first, the state must not have preempted the field with its own legislation prohibiting discriminatory employment practices; second, the city must have authority from the state to legislate in the area; the third, the resulting ordinance must not conflict with any state law.

Thirty-seven states have enacted their own legislation prohibiting discrimination in employment, and in the majority of these states city councils either are in fact, or feel that they are, constrained from enacting their own legislation. The thirty-seven states with FEP legislation can be reduced to three

<table>
<thead>
<tr>
<th>TENNESSEE</th>
<th>Corpus Christi</th>
<th>UTAH</th>
<th>WASHINGTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chattanooga</td>
<td>Dallas</td>
<td>Salt Lake City</td>
<td>Seattle</td>
</tr>
<tr>
<td>Knoxville</td>
<td>El Paso</td>
<td>VIRGINIA</td>
<td>Spokane</td>
</tr>
<tr>
<td>Memphis</td>
<td>Fort Worth</td>
<td>Arlington</td>
<td>Tacoma</td>
</tr>
<tr>
<td>TEXAS</td>
<td>Houston</td>
<td>Newport News</td>
<td>WISCONSIN</td>
</tr>
<tr>
<td>Amarillo</td>
<td>Lubbock</td>
<td>Norfolk</td>
<td>Milwaukee</td>
</tr>
<tr>
<td>Austin</td>
<td>San Antonio</td>
<td>Portsmouth</td>
<td></td>
</tr>
<tr>
<td>Beaumont</td>
<td>Wichita Falls</td>
<td>Richmond</td>
<td></td>
</tr>
</tbody>
</table>

A few of these 110 cities have ordinances that only prohibit discrimination in employment by the city government or by contractors with the city. See, e.g., Evansville, Ind., Ordinance G-69-30, July 11, 1969. This survey does not deal with these limited ordinances but only with those FEP ordinances forbidding discrimination by employers generally.


7 The cities and their respective ordinances are listed in note 3 supra.


10 Id. § 709(b), 42 U.S.C. § 2000e-8(b) (1964).


12 For a listing of the states having FEP legislation, see note 2 supra.
categories: first, there are five states in which municipal FEP ordinances have been expressly preempted; second, two states specifically concede that municipalities have the right to control discrimination in employment despite state legislation in the field; and third, there are thirty states in which the enactment of municipal FEP ordinances is neither expressly permitted nor prohibited.

Three of the nation's most populous states, California, Michigan, and New Jersey, are included in the first category, these states having taken control of FEP legislation away from their cities. New York also fits into this category, with the qualification that state legislation does endow New York City's municipal commission with powers comparable to those exercised by the state commission. Together with Utah, these four states account for thirty-six of the 134 cities surveyed and nearly one-third of the cities that had no FEP ordinances. It seems readily apparent, therefore, that the express preemption of the FEP field by these states is a prime element in accounting for the general scarcity of municipal FEP ordinances.

The states of Pennsylvania and Minnesota, making up the second category, have taken a position exactly opposed to that of the states in the premier category. In these two states it has been specifically conceded that despite state legislation on the subject, municipalities are free to enact their own FEP ordinances, and cities in these two states have been encouraged to do so. The response at the local level seems to have been quite enthusiastic since all three Minnesota cities surveyed have enacted local legislation and four out of the five Pennsylvania cities studied currently control employment practices locally. The beneficial effect that state permissiveness and encouragement can have on the promulgation of local ordinances is reflected in the observation that the surveyed cities in these two states alone account for nearly one-third of the surveyed cities currently administering FEP ordinances.


14 In Pennsylvania, the state's Human Relations Act specifically allows the operation of local FEP commissions; and in Minnesota, the state's attorney general has given his approval to municipal enforcement of fair employment practices. PA. STAT. ANN. tit. 43, § 962(b) (1964); PA. STAT. ANN. tit. 43, § 962.1 (Supp. 1969); OP. MINN. ATT'Y GEN. No. 271 (1962).

15 The states in this class are Alaska, Arizona, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

16 New York law allows municipalities to adopt FEP ordinances. N.Y. GEN. MUNIC. LAW §§ 239-o to -r (McKinney Supp. 1969). Only New York City's commission is permitted to exercise enforcement powers comparable to those of the state commission. Id. § 239-s.

17 See note 14 supra.

18 The cities of New York and Washington, D.C., could also be included within this second category. New York City's commission has been expressly granted powers equivalent to those of the state commission by the state legislature. See note 16 supra. Since Washington, D.C., is not situated within a state, no state preemption can exist.
In the remaining category are the thirty states which have neither expressly authorized the enactment of local codes nor preempted the field from their municipalities. Fourteen of the forty-four cities in the states composing this category have enacted municipal FEP ordinances. These fourteen cities are concentrated in ten of the thirty states. In so acting each city has run the risk that if its ordinance is challenged it could be held unconstitutional on the ground that the state never granted the cities the power to enact such legislation. The threat of just such a challenge to a municipal FEP ordinance is not idle. In the 1964 case of Midwest Employer’s Council, Inc. v. City of Omaha, the Nebraska Supreme Court struck down Omaha’s FEP ordinance stating:

From an examination of the city charter of the city of Omaha, we are unable to find any express authority which granted the city council power to pass legislation pertaining to fair employment practices or civil rights. Neither does the city charter fairly imply that the city council is vested with the power to pass such an ordinance. There is no grant of such power to the city by any law passed by the Legislature, nor any existing statutory law or constitutional right granted to the city of Omaha applicable to the city's right to warrant the passage of the ordinance here considered. It is apparent that the city council of the city of Omaha, in passing the ordinance in question, exceeded its power. The matters of fair employment practices and civil rights are matters of statewide and not of local concern. The city of Omaha, when its charter was adopted in 1956, never acquired any power delegated to it by the Legislature to pass an ordinance relating to fair employment practices or civil rights.

No cities surveyed in the remaining twenty states in this third group have enacted FEP legislation. A prime consideration in these instances could well be a reluctance by city councils to venture down the same path blazed by Omaha only to see the fruits of their toil gutted by the state judiciary. Another cause might likely be a feeling that state law on the subject is perfectly adequate and that municipal legislation would be superfluous.

Dixie is well represented among the remaining thirteen states having no state legislation prohibiting discrimination in employment. Not surprisingly, of the thirty-eight surveyed cities in this group only one, Nashville, had enacted FEP legislation. Although state preemption would be no barrier in these municipalities, one reason for the paucity of ordinances was proffered by the Mobile, Alabama Legal Department’s response to the survey questionnaire: “[F]air employment] comes naturally.”

19 Phoenix and Tucson, Arizona; New Haven, Connecticut; Gary and South Bend, Indiana; Des Moines, Iowa; Louisville, Kentucky; Baltimore, Maryland; St. Louis, Missouri; Canton, Cleveland, Dayton and Youngstown, Ohio; and Madison, Wisconsin. For a listing of the thirty states in this category see note 15 supra.
20 177 Neb. 877, 131 N.W.2d 609 (1966).
21 177 Neb. 877, 131 N.W.2d 609 (1966). The Nebraska FEP Act was amended in the year following the decision to give municipalities the right to enact such ordinances. Neb. Rev. Stat. § 48-1124 (1968).
22 The states composing this category are: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, and Virginia.
23 Returned Survey Questionnaire from Legal Department of the City of Mobile, Alabama, to the Notre Dame Lawyer, October 11, 1969.
III. Substantive Provisions of Municipal FE? Ordinances

A. Unlawful Employment Practices

The employment practices prohibited by each of the municipal FE? ordinances surveyed are either identical or substantially similar to those prohibited by section 7 of the model ordinance set forth in Appendix A. Basically, the provisions of these ordinances:

(1) make it unlawful for an employer to "discriminate" in hiring practices, compensation, or conditions of employment, or to recruit substantially from sources serving persons predominantly of one race, color, religion, or national origin;

(2) prohibit an employment agency from discriminating in its classification and referral of applicants;

(3) make it illegal for a labor organization to discriminate in any manner that affects an individual's employment opportunities;

(4) forbid an employer, employment agency, or labor organization from:
   (a) establishing quota systems; (b) using application forms containing questions concerning an applicant’s race, color, religion, or national origin; (c) advertising for employees of a certain race, color, religion, or national origin; and (d) discriminating in the admission to training programs or against persons who testify under the ordinance; and,

(5) in general, make it illegal for any person seeking employment to advertise his race, color, religion, or national origin, or specify that he prefers employers of a specific race, color, religion, or national origin, and make it an unfair employment practice for him to engage in or aid any other person who engages in violations of the ordinance.24

24 The following chart, taken from 1968 Ann. Rep. of the Pittsburgh Comm'n on Human Relations 28, illustrates which violations are most frequently alleged. Column one shows the breakdown of the complaints received by the Pittsburgh commission during 1968. Column two shows cumulative totals since April 1, 1953.

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>1968</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refusal to accept application</td>
<td>3</td>
<td>77</td>
</tr>
<tr>
<td>Application for employment denied</td>
<td>18</td>
<td>178</td>
</tr>
<tr>
<td>Dismissal</td>
<td>40</td>
<td>177</td>
</tr>
<tr>
<td>Unlawful pre-employment inquiry</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Conditions of employment</td>
<td>12</td>
<td>67</td>
</tr>
<tr>
<td>Upgrading, Promotion or. Transfer</td>
<td>8</td>
<td>76</td>
</tr>
<tr>
<td>Employment agency referral</td>
<td>1</td>
<td>44</td>
</tr>
<tr>
<td>Union referral withheld</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Union membership refused</td>
<td>9</td>
<td>29</td>
</tr>
<tr>
<td>Discriminatory advertising</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Abetting an unlawful employment practice</td>
<td>1</td>
<td>21</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>93</strong></td>
<td><strong>701</strong></td>
</tr>
</tbody>
</table>
Each municipal FEP ordinance studied outlaws distinctions made on the basis of race, color, creed or religion, and national origin; and all but four municipalities forbid diverse treatment based on ancestry. Much less frequently declared illegal is discrimination with respect to place of birth, age, or sex.  

Including place of birth on a list of forbidden criteria that also prohibits discrimination on the basis of national origin does not result in unnecessary duplication. Though the two criteria are very similar, the distinction between them is readily illustrated. For example, a company could, in all but the three surveyed cities prohibiting discrimination based on place of birth, decide to employ only (or refuse to employ any) applicants born in Traverse City, Michigan. In such a case the company would not violate the prohibition against

The following chart from the same source shows the types of respondents (the alleged discriminators) during the same periods:

<table>
<thead>
<tr>
<th>City*</th>
<th>Race</th>
<th>Color</th>
<th>Religion</th>
<th>Creed</th>
<th>Ancestry</th>
<th>National Origin</th>
<th>Age</th>
<th>Sex</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dayton, Ohio</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Philadelphia, Pa.</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Madison, Wis.</td>
<td>x</td>
<td>x</td>
<td>..</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Canton, Ohio, is omitted from this chart since its complete ordinance was not available.

Though the forms of discrimination outlawed by the different ordinances are varied, the types of discrimination most commonly complained of can be lumped into a very few categories. Typical is the breakdown of the ninety-three complaints received by the Pittsburgh commission in 1968. Of this total, eighty-eight complaints alleged racial discrimination and five alleged discrimination due to religion. The cumulative total of 701 employment complaints received by the Pittsburgh commission since 1953 is distributed as follows: race, 656; religion, 35; ancestry, 10. 1968 Ann. Rep. of the Pittsburgh Comm’n on Human Relations 28.

25 In tabular form, the types of discrimination banned by the ordinances surveyed are as follows:

PROHIBITED FORMS OF DISCRIMINATION IN EMPLOYMENT

26 See note 25 supra.
discrimination on the basis of national origin, as its differentiation would not be based on the happenstance of the applicant's birth in the United States. Rather, its violation would be founded on differentiation in treatment due to the applicant's place of birth. The prime reason place of birth is not included in more ordinances is likely the lack of problems arising along this line. Our population has become too mobile for employers (especially in cities with populations in excess of 100,000) to be able to insist on a particular place of birth as a prerequisite to employment, and education is so universal in the United States that persons born in a particular locale cannot be expected to have garnered any unique skills purely by virtue of the location of their nativity.

New York City, Gary and New Haven have included prohibitions against the discrimination because of age. This inclusion has not, however, proved to be any indication of a trend among municipalities. Gary and New Haven have had their bans since 1960 and New York has had its since 1965 without other cities jumping onto the bandwagon with like inclusions in their ordinances.

Interestingly, there appears to be a greater likelihood that sex discrimination will be outlawed in more cities in the future. Although at present only seven cities outlaw this differentiation,27 five of these municipalities have added sex to their definitions of "discrimination" within the last three years.28

Roughly one-half of the ordinances studied permit employers to select employees in a discriminatory manner if some bona fide occupational qualification exists to make discrimination essential or if the employer is excused from compliance by the commission administering the law.29 Also, none of the ordinances restricts anyone from selecting persons on the basis of aptitudes, skills, experience, or other objective criteria — unless, of course, the basis selected is merely a sham to disguise a choice founded on race, color, religion, national origin, or any other specifically prohibited differentiation. Moreover, none of the ordinances requires that any specific quota of minority group individuals be employed. Indeed, it seems implied from the definition of "discrimination" adopted in nearly all municipalities that quota systems are outlawed. "Discrimination" is usually defined as "any difference in treatment solely because of race, color, religion, or national origin." If an employer, therefore, determined that he would hire every fifth employee from the Negro race, and did, he would be discriminating since race would be the criterion of his choice. Following this rationale, it would appear that the federal government's Revised Philadelphia Plan,30 which is currently the center of spirited debate, would probably be interpreted as illegal in most municipalities with FEP ordinances.

The Philadelphia Plan was devised by the Department of Labor with hopes that it would help curb discriminatory practices in the building trades. Under the plan any employer bidding $500,000 or more on a federal or federally

27 Id.
28 New Haven, Connecticut; Dayton, Ohio; Pittsburgh, Pennsylvania; Nashville, Tennessee; and Madison, Wisconsin.
29 The cities permitting the bona fide occupational qualification exemption are New Haven, Connecticut; Washington, D.C.; Gary and South Bend, Indiana; Louisville, Kentucky; St. Louis, Missouri; Cleveland and Dayton, Ohio; Erie and Pittsburgh, Pennsylvania; and Nashville, Tennessee.
30 CCH EMP. PRACT. GUIDE ¶ 16,175, at 7151.
assisted construction project is required by an order of the Department of Labor to submit a form with his bid stating that he will make a good faith attempt to utilize specified percentages of minority group manpower when performing the contract. These specified percentages are determined by each employer as his own "goal," but the percentage range of minority group employees that the federal government will accept as satisfactory is established by the Office of Federal Contract Compliance [OFCC] and varies among trades and for different calendar years. If the employer's goals fail to meet the OFCC standards, the bid will not be accepted.31

Heated debate currently exists as to the plan's validity. The Comptroller General holds that it would violate Title VII of the Civil Rights Act of 1961,2 while the United States Attorney General finds the plan in all respects consistent with the Act.33 Although an extended discussion of the merits at these opposing viewpoints would be largely concerned with federal law and hence beyond the scope of this Note, it is appropriate to briefly discuss these conflicting views since the plan's quota requirements are seemingly in opposition to the letter and spirit of every municipal FEP ordinance studied.

Section 703(a) of the Civil Rights Act of 1964, like each municipal FEP ordinance studied, makes it an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.34

The Comptroller General has taken the position that if an employer is required in good faith to attempt to hire a set percentage of minority individuals (defined under the plan as Negro, Oriental, American Indian, and Spanish-surnamed American) his attempt would constitute discrimination against white individuals solely because of their color.35 The Attorney General, attempting to justify the Philadelphia Plan, disagrees. According to him:

There is no inherent inconsistency between a requirement that each qualified employee and applicant be individually treated without regard to race, and a requirement that an employer make every good faith effort to achieve a certain range of minority employees.36

31 Id. For the ranges set by the OFCC as acceptable, see id. at ¶ 16,176, at 7155.
35 REPORT OF THE COMPTROLLER GENERAL, supra note 32.
36 DECISION OF THE U.S. ATTORNEY GENERAL, supra note 33 at 6170.
While racial equality, the policy he seeks, is good, his justification is poor. He rebuts the Comptroller General's argument thus:

In evaluating the Comptroller General's challenge to the Philadelphia Plan on the basis of conflict with Title VII of the Civil Rights Act, it is important to distinguish between those things prohibited by Title VII as to all employers covered by that act, and those things which are merely not required of employers by that act. The United States as a contracting party may not require an employer to engage in practices which Congress has prohibited. It does not follow, however, that the United States may not require of those who contract with it certain employment practices which Congress has not seen fit to require of employers generally.

. . . Title VII does not prohibit some structuring of the hiring process . . . to encourage the employment of members of minority groups. 37

It would be interesting to see how the Attorney General would respond if the Labor Department issued an order requiring federal employers to "make every good faith effort to achieve a certain range of white employees" — say 99.44%. If the Attorney General really believes what he appears to be saying, such an order (though it discriminates this time against blacks and other minorities instead of whites) would be totally consistent with the Civil Rights Act. Additionally, if the federal government could set such quotas, there would be no reason why a private employer could not set his own "99.44% white" quota. If, on the other hand, the Attorney General believes such a "white" quota system to be illegal under the Civil Rights Act, then the converse, the Philadelphia Plan, has no justification.

It seems apparent that either the Philadelphia Plan as it now exists will be obliterated, or Title VII of the Civil Rights Act of 1964 will have to be amended. Assuming the latter, municipal FEP ordinances will likewise have to be amended if federal contractors are to be exempted from local penalties (unless, of course, a Title VII amendment should exempt federal contractors from municipal FEP legislation). Without either local amendment or federal exemption, municipalities would find local industry stymied and local employers placed in the dilemma of either getting no federal contracts or incurring municipal penalties for engaging in discriminatory employment practices.

B. Employer Defined

As with differences concerning the range of acts held to be discriminatory, the municipal ordinances studied display a wide variation regarding the types of employers subject to proscriptions. Religious organizations and social, fraternal, charitable and sectarian groups that do not receive government support are the "employers" in the conventional sense of the term that were most often

37 Id. at 6169-70.
expressly excluded from the definition of an employer in the ordinances studied.\textsuperscript{38} Most ordinances state that, aside from stipulated exclusions, an "employer" is a person who employs $x$ or more employees. Although one is the modal figure substituted for $x$ by the twenty-four ordinances studied, most cities set the minimum number of employees somewhat higher. The range extends from one employee in several cities to fifteen employees in Baltimore before a person is an "employer" for purposes of the ordinance.\textsuperscript{39}

38 The following table lists those persons excluded from the definition of an employer by the different ordinances:

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|c|}
\hline
\textbf{City*} & \textbf{Religious} & \textbf{Social or Fraternal} & \textbf{Charitable} & \textbf{Sectarian} & \textbf{Other} \\
\hline
Phoenix, Ariz. & x & & & (a) & (b) \\
Tucson, Ariz. & x & & & (a) & (b) \\
New Haven, Conn. & & x & & & \\
Washington, D.C. & x & & & (c) & \\
Gary, Ind. & x & x & x & & \\
South Bend, Ind. & x & & & & \\
Des Moines, Iowa & x & & & & \\
Louisville, Ky. & x & & & & (a) \\
Baltimore, Md. & x & & & & \\
Duluth, Minn. & x & & & & \\
Minneapolis, Minn. & x & & & & \\
St. Paul, Minn. & x & & & & \\
St. Louis, Mo. & & x & & & \\
New York, N.Y. & x & & & & (a) \\
Cleveland, Ohio & x & x & & & \\
Dayton, Ohio & x & x & x & & (d) \\
Youngstown, Ohio & x & x & & & \\
Allentown, Pa. & x & x & x & & \\
Erie, Pa. & x & x & x & & (e) \\
Philadelphia, Pa. & x & x & x & & \\
Pittsburgh, Pa. & x & x & x & & (e) \\
Nashville, Tenn. & x & & & & (a) \\
Madison, Wis. & & & & & \\
\hline
\end{tabular}
\end{table}

* Canton, Ohio, is omitted from this chart since its complete ordinance was not available.

(a)—Not applicable to an educational institution conducted by a particular religion.

(b)—Not applicable to a bona fide private membership club (other than a labor organization) exempted from federal taxation under 16 U.S.C. § 501(C) (1964).

(c)—Not applicable to United States government, foreign governments, or corporations wholly owned by the United States or District of Columbia.

(d)—Not applicable where based upon national security regulations established by the United States.

(e)—Not applicable where based upon security regulations of the United States, the state, or the city.

39 The minimum number of employees which an employer must employ to be subject to the various ordinances is:

\begin{table}[h]
\centering
\begin{tabular}{|l|c|}
\hline
\textbf{City*} & \textbf{Minimum Employees} \\
\hline
Phoenix, Ariz. & 1 \\
Tucson, Ariz. & 1 \\
New Haven, Conn. & 3 \\
Washington, D.C. & 1 \\
Gary, Ind. & 3 \\
South Bend, Ind. & 12 \\
Des Moines, Iowa & 4 \\
Louisville, Ky. & 2 \\
Baltimore, Md. & 15 \\
Duluth, Minn. & 2 \\
Minneapolis, Minn. & 1 \\
St. Paul, Minn. & 1 \\
St. Louis, Mo. & 1 \\
New York, N.Y. & 4 \\
Cleveland, Ohio & 4 \\
Dayton, Ohio & 5 \\
Youngstown, Ohio & 4 \\
Allentown, Pa. & 6 \\
Erie, Pa. & 1 \\
Philadelphia, Pa. & 5 \\
Pittsburgh, Pa. & 12 \\
Nashville, Tenn. & 1 \\
Madison, Wis. & 1 \\
\hline
\end{tabular}
\end{table}

* Canton, Ohio, is omitted from this chart since its complete ordinance was not available.
C. Employee Defined

As the following table shows, a person conventionally considered to be an employee in many cases is not so counted in determining employee status within the meaning of most municipal FEP ordinances:

<table>
<thead>
<tr>
<th>City</th>
<th>Domestic Servants</th>
<th>Servant Acting in a Personal or Confidential Relation</th>
<th>Immediate Family (Parents, Spouse, or Children)</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Canton, Ohio</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Dayton, Ohio</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>x</td>
<td></td>
<td>x</td>
<td>(a)</td>
</tr>
<tr>
<td>Philadelphia, Pa.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Madison, Wis.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a)—Any individual employed in agriculture is not considered to be an employee.

As is apparent, members of a person's immediate family (his parents, spouse, or children) are not usually defined as employees; nor in many cases, will a domestic or agricultural worker or a servant in a personal or confidential relationship be so classified. By virtue of these exclusions an employer is left free to discriminate with respect to excluded personnel, even though he might be an employer subject to penalty under the ordinance for discriminating against other employees as defined by the ordinance. For example, businessman A,
who is the sole proprietor of A’s grocery store with fifty “employees” as defined by his local FEP ordinance, can, if the ordinance excludes domestics from the “employee” classification, turn down Z, a Caucasian, from employment as his household maid solely because of Z’s race should he prefer to have a Negro maid. A’s “employer” status in no way causes him to violate the act with respect to Z, for it is also necessary that Z, or the position she applied for, be of “employee” status.

D. Fair Employment Practices Commissions

The task of administering FEP ordinances is assigned to a commission, variously composed of from five to twenty appointed commissioners. The commissioners serve for terms of one to six years depending on the ordinance, and the terms of the original commissioners are staggered (while the terms of all successors are constant) in order to provide continuity within the commission.  

---

The data covering the number of commissioners serving on each of the municipal commissions, their tenure, and the means by which they are selected and compensated is as follows:

<table>
<thead>
<tr>
<th>City</th>
<th>Number of Commissioners</th>
<th>Term (yrs.)</th>
<th>Method of Selection</th>
<th>Amount of Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>5a</td>
<td>1</td>
<td>IV</td>
<td>None</td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>5b</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>9</td>
<td>3</td>
<td>II</td>
<td>None</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>9</td>
<td>3</td>
<td>V</td>
<td>None</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>15</td>
<td>4</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>9</td>
<td>3</td>
<td>VI</td>
<td>None</td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>10</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>5c</td>
<td>3</td>
<td>VII</td>
<td>None</td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>10</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>7d</td>
<td>5</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>5e</td>
<td>1e</td>
<td>II</td>
<td>None</td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>11</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td>5f</td>
<td>1</td>
<td>VIII</td>
<td>None</td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>15</td>
<td>3</td>
<td>II</td>
<td>None*</td>
</tr>
<tr>
<td>Canton, Ohio</td>
<td>12</td>
<td>6</td>
<td>II</td>
<td>None</td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>17</td>
<td>4</td>
<td>IX</td>
<td>None</td>
</tr>
<tr>
<td>Dayton, Ohio</td>
<td>20</td>
<td>4</td>
<td>III</td>
<td>None</td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>7</td>
<td>3</td>
<td>II</td>
<td>None</td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>13</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>11</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
<tr>
<td>Philadelphia, Pa.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>None</td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>15</td>
<td>4</td>
<td>II</td>
<td>None</td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td>15</td>
<td>N/A</td>
<td>X</td>
<td>None</td>
</tr>
<tr>
<td>Madison, Wis.</td>
<td>15</td>
<td>3</td>
<td>I</td>
<td>None</td>
</tr>
</tbody>
</table>

* The chairman of the commission is salaried; other commissioners are not.
N/A—The ordinance containing this information was not available.
a—The Phoenix Human Relations Commission has an Employment Committee composed of not less than five members of the entire commission.
b—The Tucson Commission on Human Relations consists of twenty-four commissioners, five of whom compose the “Enforcement Committee.”
c—The Louisville and Jefferson County Human Relations Commission is composed of twenty-one members. Five members of the commission serve on the Equal Employment Opportunities Division.
d—The Duluth ordinance is inconsistent as to the number of commissioners. In section 19-3 it provides that the commission “shall consist of a chairman and six other members,” yet in section 19-4 the ordinance continues that “[t]he first chairman . . . shall be appointed for a term of five years. The remaining forty original members shall . . .” (Emphasis added.)
e—The Minneapolis Commission on Human Relations has twenty-one members, fifteen of whom are appointed by the mayor and six of whom are appointed by the city council.
For the sake of efficiency and economy, and in the interest of providing consistency in rules of operation, the commission is usually assigned the task of enforcing laws against discrimination in housing and public accommodations as well as violations in employment. In fact, the same ordinance enacted to prohibit unfair employment practices is, in many cases, the same ordinance that outlaws discrimination in housing and public accommodations. Hence, only one of the commissions that enforces FEP ordinances is called a “fair employment practices” commission. Rather, most are created and designated as “human rights” or “human relations” commissions to denote their general coverage.

In New York City and Philadelphia, the commission chairman is salaried and works on a full-time basis. Aside from these two instances, none of the

<table>
<thead>
<tr>
<th>City</th>
<th>Name of Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>Commission on Human Relations</td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>Commission on Equal Opportunities</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>Human Relations and Fair Employment Practices Commission</td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>Human Rights Commission</td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>Community Relations Commission</td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>Fair Employment and Housing Practices Commission</td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>Department of Civil Rights</td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>Department of Human Rights</td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td>Council on Human Relations</td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>City Commission on Human Rights</td>
</tr>
<tr>
<td>Canton, Ohio</td>
<td>Fair Employment Practices Advisory Board</td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>Community Relations Board</td>
</tr>
<tr>
<td>Dayton, Ohio</td>
<td>Human Relations Council</td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>Community Relations Committee</td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>Commission on Human Relations</td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td>Human Relations Commission</td>
</tr>
<tr>
<td>Madison, Wis.</td>
<td>Equal Opportunities Commission</td>
</tr>
</tbody>
</table>
other commissioners in these two cities and none of the commissioners (including the chairmen) in the remaining cities surveyed devote their full-time effort to the commission or receive any form of remuneration from the city other than reimbursement for expenses. The part-time commissioners normally meet only once each month and leave the day-to-day operation of the commission to an executive director (who is not a commissioner) and other salaried personnel.

The size of the staff employed by the city to carry out the administrative and other operations of the commission generally varies in proportion to the size of the city. In New York City, for example, eighty-two administrative, professional, and clerical staff members work under the commission's supervision. Nashville, in contrast, employs only three staff members.

Functionally, the responsibilities of staff personnel often follow a breakdown paralleling the organizational chart schematically depicted below.

**Structure of the Typical FEP Commission**

```
  Commission Chairman
    /\              /
   /   \          /   \
  Commissioners  Exec. Director
    |          /     \
  Staff Members /      / Staff Members
  in Charge of /  Staff Members
     Investigation/    in Charge of
       and Compliance/  Research
                                   \
                       /\
                     /   \
                Clerical Staff
                  and
                  Receptionists
```

The major burden for coordinating and supervising staff activities is usually shouldered by the commission's executive director. As shown by the organizational chart, he serves as the liaison officer between the commissioners and the

---

42 See note 45 infra.
various staff departments. Under him will usually be staff members in charge of investigation and compliance. Whenever a complaint is filed with the commission, these members have the responsibility of determining whether there is probable cause for believing that an unfair employment practice has been or is being committed. Additionally, they are responsible for ascertaining whether parties have complied with orders promulgated by or agreements negotiated with the commission. Other staff members are also generally found functioning in the fields of education, research, and community relations and as personnel serving as receptionists and in clerical positions.

Powers commonly granted to the commissions include the capacity to receive complaints of unlawful discriminatory practices, to make findings on them, and to seek adjustment of complaints where discrimination is found to exist. In conducting their investigations and making their findings, they are usually empowered to hold hearings, administer oaths, and compel the production of evidence and the attendance of witnesses.\(^5\)

Each ordinance permits the commission to adopt its own rules and regulations for implementing the provisions of the ordinance. The broad authority to make these rules provides the commission with a large degree of flexibility, a quality that is especially necessary in the ever-evolving fair employment field.

E. Procedures

The foremost responsibility of each commission is the processing of complaints alleging unlawful discriminatory practices. The method of dealing with

\[\text{NOTE}\]

\[\text{273}\]

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\[45\] The powers granted the various commissions and the frequency with which the commissioners meet are portrayed by the following table:

<table>
<thead>
<tr>
<th>City*</th>
<th>Frequency of Meetings (in practice)</th>
<th>Does Commission Investigate on Own Initiative?</th>
<th>Does Commission Have Subpoena Power?</th>
<th>Does Ordinance Provide for a Staff?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>N/A</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>Every second month</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>Twice/month</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>Irregular</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td>Twice/month</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Canton, Ohio</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Dayton, Ohio</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>Twice/month</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Philadelphia, Pa.</td>
<td>Monthly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>Twice/month</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td>Monthly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* Madison, Wis., is omitted from this chart since its complete ordinance was not available.

N/A—Information not available.
these complaints is fundamentally the same under each ordinance studied, although slight deviations do exist.

FEP ordinances vary as to who is permitted to file a complaint alleging a discriminatory employment practice. In all cities an aggrieved person may complain, and in most cities the commission itself may initiate a complaint. Beyond this, however, there is much variation among the few cities allowing complaints to be filed by complainants other than those personally victimized. Five cities permit an employer to file a complaint when his employees are violating or are threatening to violate the ordinance. The city of Pittsburgh allows the executive director or an organization established to combat discrimination or promote equal opportunities to file a complaint; New Haven permits the filing of a complaint by the executive director; St. Louis allows the city counselor or any member of his division, any vocational school, or any labor organization to complain; and Washington, D.C., has recently taken the ultimate step, allowing "any person or organization, whether or not an aggrieved party" to file a com-

<table>
<thead>
<tr>
<th>City</th>
<th>Aggrieved Person</th>
<th>Commission</th>
<th>Employer</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>x</td>
<td>x</td>
<td></td>
<td>(a)</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>x**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>x**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>x**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>(c)</td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Canton, Ohio</td>
<td>x**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>x**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dayton, Ohio</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Philadelphia, Pa.</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>x</td>
<td></td>
<td></td>
<td>(d)</td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Madison, Wis., is omitted from this chart since its complete ordinance was not available.

** Although the ordinance does not specify who may file a complaint, it implies that any aggrieved party may do so.

(a) The executive director is authorized by the ordinance to file a complaint.

(b) Any person or organization, whether or not an aggrieved party, may file a complaint, even though only general discrimination unrelated to a specific person or instance is alleged.

(c) The city counselor or any member of his division may file a complaint, or the complaint may be filed by a vocational school or labor union whose students or members refuse or threaten to refuse to cooperate or comply with the ordinance.

(d) The commission may authorize the executive director to initiate complaints. Also, any organization that has as one of its purposes the combating of discrimination or the promotion of equal opportunities may file a complaint.
plaint "including a complaint of general discrimination unrelated to a specific person or instance." 474

Some limit is usually placed on the period of time permitted to elapse between the occurrence of the alleged discriminatory practice and the filing of a complaint. 48 Various other requirements, such as what information the complaint must include and where it must be filed, are also imposed upon the complainant, but these requirements are included as part of the commission's rules and regulations rather than as part of the ordinance. Excerpts from a typical set of FEP commission regulations are presented in Appendix B.

After a complaint is filed it is usually turned over to a commissioner or staff member for investigation. The investigator then strives to obtain all the pertinent facts concerning the grievance of the complainant. Depending on the powers granted him by the ordinance and his need, the investigator may subpoena evidence from the alleged discriminator in order to determine whether the complaint was brought for probable cause. 49 Upon completion of his inquiry, the investigator's written findings are forwarded to the commission for a determination of probable cause. If the commission determines that there is no probable cause for believing that an unlawful employment practice has been or is being committed, it will so notify the complainant. Under most ordinances the complainant is then given an opportunity to file for a hearing before the commission to review the findings. If, after this hearing, the commission finds no probable cause it will dismiss the complaint and the complainant has no further remedies through the commission (although most ordinances allow him to seek judicial review of the commission's findings). If, after investigating a complaint or after a review hearing, the commission finds that probable cause exists for believing that an unfair employment practice has occurred, the commission or members of its staff will seek to cure or eliminate the misdeed through conference, conciliation, and persuasion. It is in this area that most of the commission's actual work is done and is done most successfully. Of the 2,738 com-

48 As the following table shows, filing deadlines found in the various ordinances differ markedly:

<table>
<thead>
<tr>
<th>City*</th>
<th>Time Allowed for Filing Complaint</th>
<th>City*</th>
<th>Time Allowed for Filing Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>No limit</td>
<td>St. Louis, Mo.</td>
<td>No limit</td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>Sixty days</td>
<td>New York, N.Y.</td>
<td>One year</td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>Ninety days</td>
<td>Canton, Ohio</td>
<td>No limit</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>No limit</td>
<td>Cleveland, Ohio</td>
<td>Ninety days</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>Sixty days</td>
<td>Dayton, Ohio</td>
<td>Six months</td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>No limit</td>
<td>Youngstown, Ohio</td>
<td>No limit</td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>Twenty days</td>
<td>Allentown, Pa.</td>
<td>Ninety days</td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>Ninety days</td>
<td>Erie, Pa.</td>
<td>Sixty days</td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>Thirty days</td>
<td>Philadelphia, Pa.</td>
<td>Ninety days</td>
</tr>
<tr>
<td>Duluth, Minn.</td>
<td>No limit</td>
<td>Pittsburgh, Pa.</td>
<td>No limit</td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>No limit</td>
<td>Nashville, Tenn.</td>
<td>Six months</td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>No limit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Madison, Wis., is omitted from this chart since its complete ordinance was not available.
49 See note 45 supra.
plaints filed in the surveyed cities, only 95 resulted in hearings. One possible reason for the paucity of hearings is that since most ordinances require that the fruits of investigation and matters discussed at negotiating sessions be kept confidential, most violators prefer to settle the dispute and correct their wrongs without incurring the adverse publicity that an open hearing might entail.

In addition to requiring a violator to cease and desist from his unlawful practices, the commissions are usually free at this stage to require affirmative action such as the upgrading or reinstatement of the employee discriminated against (with or without back pay), hiring, or acceptance in a labor organization if the situation warrants. A novel approach to conciliation has recently been adopted by the Minneapolis commission. Among the terms of conciliation that may be meted out in Minneapolis is a requirement that the violator “complete a course in minority history.”

If no agreement can be reached through conference, conciliation, or persuasion, the commission notifies the respondent that a public hearing will be held at a specified time and place. The respondent usually is allowed at this time to file an answer to the complaint. At the hearing he may or may not be required to appear in person, and he ordinarily is allowed counsel. The commission usually is not bound by ordinary rules of evidence at the hearings, although the respondent is allowed to be fully heard and to confront and cross-examine witnesses. Testimony is under oath and recorded.

In order to facilitate the hearing, the complainant must be personally present, and the commission will compel the attendance of any indispensable party. In addition, the commission usually has discretion to permit the joinder or intervention of third parties. Depending on the ordinance, the hearing is held

The following table depicts the disposition of complaints during 1968 by the various commissions surveyed:

<table>
<thead>
<tr>
<th>City*</th>
<th>Complaints Received</th>
<th>Hearings Held</th>
<th>Cease and Desist Orders Issued</th>
<th>Cases Taken Into Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>25</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>67</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>91</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>285</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>300</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>29</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>32</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Louisville, Ky.</td>
<td>13</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Baltimore, Md.</td>
<td>333</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Minneapolis, Minn.</td>
<td>43</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>St. Paul, Minn.</td>
<td>303</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>St. Louis, Mo.</td>
<td>78</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>541</td>
<td>50</td>
<td>35</td>
<td>10</td>
</tr>
<tr>
<td>Canton, Ohio</td>
<td>19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Cleveland, Ohio</td>
<td>98</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Youngstown, Ohio</td>
<td>54</td>
<td>4</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Allentown, Pa.</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Erie, Pa.</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Philadelphia, Pa.</td>
<td>240</td>
<td>23</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Pittsburgh, Pa.</td>
<td>93</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Nashville, Tenn.</td>
<td>75</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1968 Totals</td>
<td>2738</td>
<td>95</td>
<td>47</td>
<td>15</td>
</tr>
</tbody>
</table>

* Dayton, Ohio, is omitted from this chart since its ordinance was not enacted until 1969. N/A—Information not available.

Totals were not available from the Duluth, Minn., and Madison, Wis., commissions.

either before the whole commission (or at least a quorum), before only an
enforcement or employment committee composed of a preselected group of
commissioners, or before a hearing tribunal composed of a designated number
of commissioners appointed by the chairman of the commission.

If, after considering all the evidence presented at the hearing, it is found
that the respondent has not engaged in any discriminatory employment practice,
the hearing tribunal states its findings, dismisses the complaint, and notifies
the parties. If some unlawful practice is found to have occurred or to be oc-
curring, the tribunal likewise states its findings but then refers the case to the
entire commission (if the entire commission is not holding the hearing and the
ordinance requires referral). The commission (or the hearing tribunal, if the
tribunal’s findings need not be referred to the entire commission) then orders
the respondent to cease and desist from his unlawful practice and to take any
other affirmative action that the commission finds appropriate. In addition,
the commission usually is able to require the respondent to file a report showing
compliance with the commission’s order.

Any aggrieved party ordinarily will be allowed to appeal from the com-
mission’s dismissal or order to a court of competent jurisdiction within thirty
days. If the respondent refuses to comply with any order, the commission like-
wise may certify the case to a court of competent jurisdiction for enforcement
or to impose penalties on the respondent. Such certification, however, is a rarity.\textsuperscript{52}

As illustrated by the following table, there is a wide variation in the penalties
imposed on violators of municipal FEP ordinances. Several cities have no pen-
alties while in other cities violators may be fined up to $1,000 or imprisoned for
up to one year.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|}
\hline
\textbf{City} & \textbf{Maximum Criminal Penalties for Discriminatory Employment Practices} \\
\hline
Phoenix, Ariz. & $300 and/or three months. \\
Tucson, Ariz. & None. \\
New Haven, Conn. & None. \\
Washington, D. C. & $300 or ten days. \\
Gary, Ind. & None. \\
South Bend, Ind. & $100. \\
Des Moines, Iowa & None. \\
Louisville, Ky. & $100. \\
Baltimore, Md. & None. \\
Duluth, Minn. & None. \\
Minneapolis, Minn. & $100 or ninety days. \\
St. Paul, Minn. & None. \\
St. Louis, Mo. & $500. \\
New York, N. Y. & $500 and/or one year. \\
Cleveland, Ohio & $1,000 and thirty days. \\
Dayton, Ohio & First offense: $100; subsequent offenses $500 and/or thirty days.\textsuperscript{**} \\
\hline
\end{tabular}
\end{table}

\textsuperscript{52} See note 50 supra.
Youngstown, Ohio $1,000 and/or six months.
Allentown, Pa. $300 and costs. If default in payment of fine, ninety-day penalty may be added.
Erie, Pa. $100. If default in payment of fine, thirty-day penalty may be added.
Philadelphia, Pa. $300 and/or ninety days.
Pittsburgh, Pa. $300. If default in payment of fine, ninety-day penalty may be added.
Nashville, Tenn. None.

* Canton, Ohio, and Madison, Wis., are omitted from this chart since their complete ordinances were not available.
** Penalty applicable only for failure to comply with an order to cease and desist issued by the human relations council.

IV. Commission Effectiveness

Ideally, four elements must be present for the greatest return from a municipality's investment in an FEP commission. First, the commission must operate under a complete, yet flexible, ordinance. Second, sufficient funds must be available for the commission's operations. Third, commissioners and staff must continually be updated with information concerning the changes taking place in the civil rights movement, both within and without the commission's own sphere of operations. Fourth, the commission must move beyond its basic duty of handling complaints. This means expanding operations of the commission to include long-range affirmative action programs aimed at eventually eliminating discrimination permanently throughout the city.

A. Workable Ordinance

A model fair employment practices ordinance is appended to this Note to assist a city in satisfying the first requisite. The ordinance enacted in any municipality must, of course, provide prohibitions, procedures, and penalties, but an easily overlooked essential is the addition of provisions giving the commission power to proceed beyond the mere handling of individual complaints. Commissions should be given as much freedom as possible to set up their own affirmative action programs. To provide this flexibility, provisions such as those allowing the commission or its executive director to file a complaint, to investigate discriminatory practices on its own initiative, and to determine its own regulations for implementation of the ordinance are essential. Through provisions such as these the commission is liberated from its bonds and is able to formulate and implement creative programs, thereby expanding its value to the community.

B. Sufficient Financial Resources

The most workable and flexible FEP ordinance in the world may be of little value if sufficient funds are not provided for its implementation. Even if commissioners can and do set up vigorous programs to assail unlawful employment practices, the part-time nature of their efforts necessarily requires that a staff be entrusted with implementation of the programs. When pecuniary resources are minimal, sufficient and skilled staff obviously cannot be employed. The need
for financial means to permit the employment of suitable staff personnel is vividly illustrated by the following excerpts from letters written by key individuals administering three municipal commissions surveyed.

Russell B. Barbour, Executive Director of the Allentown Human Relations Commission, writes:

You ask how can Commissions be made stronger. Many Commissions do not have a staff, and the good citizens on the Commission have no time or skill to really do the hard and detailed work of human relations. When I worked for the State Commission I went to many [municipal] Commissions and saw them struggling. I know that they will never do anything until they get staff.53

David L. Glenn, Director of the Baltimore Community Relations Commission, adds:

In terms of our present structure and existing law, I would say, only, that our inability to be more effective relates more to our lack of staff and budget than it does to any grave deficiencies in the law.54

Vernon L. Blakely, Compliance Officer of the Erie Human Relations Commission, says:

As for recommendations for improving our Commission, I feel that it is compulsory that our budget, which is now approximately $35,000, be substantially increased in order that we may be able to initiate meaningful programs dealing with human relations in the City of Erie. Also, I feel very strongly that our staff, presently consisting of an Executive Director, a Compliance Officer, an Education Officer, a Secretary and a Receptionist should be expanded.

Without an adequate staff and a substantial budget, our office cannot be as effective as we would like it to be.55

Considering these financial problems from the taxpayer or city council's perspective, however, gives some indication as to why these parties who pay for or allocate funds to the commission might well consider the budget overly generous. In comparing the funds granted the commissions56 to the employment com-

<table>
<thead>
<tr>
<th>City</th>
<th>Funds Available to Commission During Current or Last Fiscal Year</th>
<th>City</th>
<th>Funds Available to Commission During Current or Last Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Ariz.</td>
<td>$61,869</td>
<td>Louisville, Ky.</td>
<td>70,000</td>
</tr>
<tr>
<td>Tucson, Ariz.</td>
<td>$50,000</td>
<td>Baltimore, Md.</td>
<td>337,000</td>
</tr>
<tr>
<td>New Haven, Conn.</td>
<td>N/A</td>
<td>Duluth, Minn.</td>
<td>None</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>$83,000</td>
<td>Minneapolis, Minn.</td>
<td>141,000</td>
</tr>
<tr>
<td>Gary, Ind.</td>
<td>$57,220</td>
<td>St. Paul, Minn.</td>
<td>None</td>
</tr>
<tr>
<td>South Bend, Ind.</td>
<td>$27,381</td>
<td>St. Louis, Mo.</td>
<td>150,000</td>
</tr>
<tr>
<td>Des Moines, Iowa</td>
<td>$468,440</td>
<td>New York, N.Y.</td>
<td>795,040</td>
</tr>
</tbody>
</table>

54 Letter from David L. Glenn to James B. Flickinger, Dec. 9, 1969, on file with the Notre Dame Lawyer.
55 Letter from Vernon L. Blakely to James B. Flickinger, Dec. 16, 1969, on file with the Notre Dame Lawyer.
56 The commissions studied received the following funds during the current or last fiscal year.
plaints received during 1968,\textsuperscript{57} the average cost of handling each complaint by the surveyed commissions was $1,257.\textsuperscript{58} The range of these costs was from $191 per complaint in Gary\textsuperscript{59} to $14,640 per complaint in Des Moines. These average costs come out to even more astronomical figures if one eliminates from consideration complaints filed without probable cause, where the commission lacked jurisdiction, or where the complainant failed to proceed. To illustrate this point, consider the following breakdown taken from the 1968 Annual Report of the Pittsburgh Commission on Human Relations. Column one shows the cases processed during 1968. Column two shows the cumulative total of cases processed from April 1, 1953, through December 31, 1968.\textsuperscript{60}

\begin{center}
\begin{tabular}{lrr}
\textbf{Disposition of Employment Complaints Filed} & \textbf{1968} & \textbf{Total} \\
\hline
Satisfactorily adjusted & 17 & 37 \\
Probable cause found — complaint sustained &  & \\
\hspace{1em} a) adjusted & 1 & 163 \\
\hspace{1em} b) conciliation in process & 0 & 1 \\
No probable cause found & 32 & 345 \\
No probable cause as to specific complaint but other unlawful practices found &  & \\
\hspace{1em} a) adjusted & 0 & 24 \\
\hspace{1em} b) conciliation in process & 0 & 0 \\
Lack of jurisdiction & 2 & 29 \\
Complainant failed to proceed & 8 & 67 \\
Under investigation & 33 & 35 \\
\hline
TOTAL & 93 & 701 \\
\end{tabular}
\end{center}

Since Pittsburgh operated on a $208,883 budget during 1968,\textsuperscript{61} in a cost-per-employment-complaint analysis it cost the commission $2,245 to handle each of the ninety-three complaints. But if one considers that satisfactory adjustment was achieved in only seventeen instances, the total cost per adjustment jumps to a whopping $12,287.

This cost-per-complaint analysis, however, is not entirely fair to the commissions for a number of reasons. First, the total funds allocated may, depend-

\begin{tabular}{lrr}
Canton, Ohio & 10,932 & Philadelphia, Pa. & 534,304 \\
Cleveland, Ohio & 118,000 & Pittsburgh, Pa. & 208,883 \\
Dayton, Ohio & 85,088 & Nashville, Tenn. & 52,126 \\
Youngstown, Ohio & 25,058 & Madison, Wis. & N/A \\
Allentown, Pa. & 21,000 & & \\
Erie, Pa. & 35,265 & N/A — Information was not available. & \\
\end{tabular}
ing upon the particular municipality, also be used to prevent discrimination in housing and public accommodations as well as in employment. In Pittsburgh, for example, while ninety-three employment complaints were filed with the commission in 1968, this was less than one-third of the total complaints received. There were 229 complaints alleging other types of discrimination. Second, it is not only those who actually file complaints who benefit from the ordinance and the commission's existence. For example, commissions in many cities act on their own initiative to eliminate discriminatory practices and patterns in entire factories and industries even though no complaint has been filed. Finally, the mere existence of a workable ordinance known to be administered by a capable commission may well serve as a potent deterrent to the propagation of employment abuses.

Naturally, the taxpayers and city council in each of the municipalities must weigh all of these factors in determining the value of the commission to their city. In doing so, however, they must realize that even if the commissioners have the best aims and plans for the elimination of discrimination in employment, these ends cannot be carried out merely by a two or three hour meeting of the commissioners once each month. Meaningful programs usually will be accomplished only after many weeks, months, and possibly years of preparation and work. And this preparation and work will ordinarily be done only if the city provides an adequate budget for a sufficient staff.

C. Communication

Communication, the third requisite, is increasingly coming to the limelight as an essential element for the effective destruction of discriminatory employment practices by municipal commissions. In order for a commission to effectively combat discrimination there must necessarily exist an interchange of thoughts and ideas, first, between members of the commission and members of the community; second, among the commissioners themselves and between them and their staff; and third, between members of the commission and other commissions and organizations combating discrimination. Utilization of these channels for interpersonal dialogue will aid each of the parties in attaining a greater understanding of local problems; of commission practices, programs, and procedures; and of new developments, ideas, and laws.

1. With the Community

The need for healthy commission-community relations is vital if the local commissions are to operate effectively. This point was emphasized by the New Haven Commission thus: "It is our contention that it is the government's function to serve the people; therefore, we must strengthen our knowledge of the people in order to know best how they wish us to serve them." A commendable example of the steps that a commission can take so as to better understand the problems facing the people is illustrated by the following


Early in 1968, the Community Relations Commission requested and received special funding from the Board of Estimates to operate a Mobile Neighborhood Office. This action followed the expressed desire of our Commissioners that greater efforts be made to make services of the Community Relations Commission more known and available to residents of the older and predominately black areas of the City.

The Commissioners held the opinion that many residents of the ghetto often lacked the time or means to come downtown or, in too many instances, felt too alienated from normal channels of government to report problems of discrimination to CRC. In addition to obtaining reports of discriminatory practices covered by Article 4 of the City Code, it was felt that more situations of racial tensions and conflict would become known to the Commission staff via a neighborhood mobile office. CRC’s funding request in the amount of $6,500 was granted by the Board of Estimates, with the stipulation that the van also provide information about job opportunities.

The Mobile Office has been following an itinerary which takes it into heavily travelled black and racially mixed areas of Baltimore City. The initial schedule developed was, by necessity, an experimental one. Several stops initially selected were dropped and other more productive locations took their places. In addition to receiving possible complaints of discrimination and reports of racially-related trouble in various neighborhoods of the City, our staff has been able to assist citizens to obtain desired information and necessary services from City and other public agencies.

The wisdom and foresight of the Board of Estimates was confirmed by the fact that approximately 80 per cent of all persons who sought help from the CRC Neighborhood Office during the last quarter of 1968 were in search of information about available jobs of training opportunities. Members of Community Relations Division who regularly staff the van and CRC’s Driver-Clerk are joined daily on the Mobile Office by the staff from the Maryland State Employment Service who are able to provide job information to those coming aboard the van and who, when particular situations demand such action, can follow-up in order to help particularly hard-to-place persons find an employment niche.⁶⁴

A similar method of “reaching out to the community” is witnessed in the following excerpt from the 1967 Annual Report of the New York City Commission on Human Rights.

In January the Commission resumed the practice, begun in 1966 of sponsoring evening community meetings known as Human Rights Nights. At these meetings, Human Rights Commissioners assisted by staff members met with local residents in different locations throughout the five boroughs to discuss local problems and how the Commission could help to solve them. By their physical presence and constant availability the Chairman and other Commissioners demonstrated a willingness to talk to the people in their familiar surroundings and to learn at first hand what troubled them, such as housing, jobs, police protection or brutality, crime, and school conditions, garbage collections, traffic lights. All these conditions have an immediacy not easily conveyed in terms of an official complaint.

lodged at a government office between the hours of the official workday of nine to five. By so doing the Commission made itself a living instrument for use by those who were aggrieved and discriminated against.\(^65\)

Besides these "Human Rights Nights" to discuss problems with private individuals, the New York commission kept itself aware of the problems of industry through the frequent holding of informal "open house" receptions.

To establish better rapport between the Commission and private industry and to clear up misunderstandings about the direction and scope of the Commission program, key personnel from specific industries and occupations were welcomed at a series of informal "Open House" receptions at the Commission headquarters where they were greeted by the Chairman and escorted on a tour of the offices. Heads of various operating divisions and special projects described their programs, especially those aspects relevant to the interests of the guests of the day. The resources of the agency were put at the disposal of any company or occupational group that expressed a desire for guidance in developing more positive equal opportunity programs within its own organization or specialty.\(^66\)

Confrontations with the community in instances such as these are an invaluable aid in providing the commissioners with insights into local problems.

Beyond these types of informal contacts, intensive efforts at reaching the community can also be effectuated through speeches, publications, the press, radio, and television. Publicity is often cheap, yet its importance in shaping public attitudes and in opening communication between the commission and the community is often priceless.

2. Within the Commission

Because commissioners are normally unsalaried and generally meet only once each month, communication among the commissioners and between them and their staff is severely retarded. This lack of intercourse certainly inhibits the growth of their familiarity with each other and with the dimensions of the problems with which they must cope. As Russell B. Barbour, Executive Director of the Allentown Human Relations Commission, noted:

Very often the commissioners are appointed, and they are good citizens but could be very ignorant of the civil rights movement. Even if they are alert, the field of human relations is so broad and so dynamic that some training must go on. The group's sharing of their own human relations within a commission is important to understand, and very often the members of the commissions don't know each other and don't know where words come from. A lot of growing together is necessary, and some continuing study of the field is also necessary.

The field of human relations is still a new one, and there is a great deal of confusion as to what a program is and how it is to be made effective. Our commission has grown in many ways, and I think it would be good for us to get off for a couple days on a retreat so we could know each other better and move in depth on some of the issues of the struggle.\(^67\)


\(^{66}\) \textit{Id.} at 12.

\(^{67}\) Letter from Russell B. Barbour to James B. Flickinger, Dec. 3, 1969, on file with the \textit{Notre Dame Lawyer}. 
A "retreat" might temporarily alleviate some of these troubles, but more is needed. All the problems confronting the future success of any organization will not be resolved in a two-day get-together, especially when the future cannot even be foreseen with certainty.

At one extreme, the dilemma might be solved by putting all the commissioners on salaries and requiring that they devote their full time to the commission. Although this would keep the commissioners in contact with one another and informed of current events so that workable programs could be established, the cost of implementing such an approach would likely be prohibitive.

Between the extreme of employing all the commissioners and the present system of normally employing none are other alternatives for increasing communication within a commission. For example, less than all of the commissioners could be employed, the executive director could be made a commissioner, or perhaps the commissioners could be employed on a "one full day per week" basis. No one solution would be ideal for every city. Value of the return as compared to cost must be the ultimate guideline.

3. With Other Agencies

Communication between municipal FEP commissions and other civil rights groups does not usually prevail. Although some commissioners or staff members occasionally attend seminars relating to their FEP work, the commissions are generally isolated entities and are seldom operated as more than a clearinghouse for complaints. There are generally no organizations that coordinate programs between different municipalities or strive to keep municipal FEP commissions abreast of new laws, programs, and ideas. Even between local and state FEP offices cooperation is usually a matter of transferring cases when complaints are filed with the wrong commission. A notable exception to this general rule exists in Pennsylvania. There, the Erie, Philadelphia, and Pittsburgh commissions have each entered into an agreement with the Pennsylvania Human Relations Commission so as to better coordinate their efforts. A copy of the Memorandum of Agreement detailing the relationship between the municipal commissions and the state authority is set forth in Appendix D.

The state-local cooperation found in Pennsylvania is depicted in this excerpt from the 1968 Annual Report of the Pittsburgh Commission on Human Relations:

[The Pittsburgh Commission on Human Relations] has always had cordial and cooperative relationships with the Pennsylvania Human Relations Commission and its regional office in Pittsburgh. Staff members of the two agencies met periodically on a variety of problems and cooperated in some joint efforts. CHR staff served as resource and discussion leaders at various workshops conducted by the Pennsylvania Commission.

Late in March, the full staffs of the two agencies met to discuss mutual problems and exchange program ideas. One of CHR's Commissioners, then a member of both Commissions, chaired the meeting. The staffs formed

68 The Allentown commission has entered into a separate agreement with the Pennsylvania state commission. D. Powell, Human Relations Councils in Pennsylvania f-1 (1969).
an ongoing committee of staff members from both agencies to continue the exchange and discussion on a regular basis.\(^6\)

Similarly, New York City has been coordinating its efforts with those of the state commission:

Another means by which the Commission sought to improve the efficiency of its enforcement procedures was the initiation of a closer working relationship with the State Commission for Human Rights in areas of parallel or overlapping concern.\(...\)

The first of a succession of joint meetings of the two full commissions took place at a luncheon on August 30. At that time the groundwork was laid for a joint effort in enforcing the anti-discrimination laws in New York City. Each Commission formed a liaison committee, assisted by a staff member, to work out the details. These committees met thereafter at regular intervals to explore and develop ways of sharing information and pooling resources.\(...\)

At year's end, the liaison committees were discussing the exchange of information about caseloads and agency structure. Differences and tentative plans for the reorganization of the State commission in the laws under which each commission operates made the working out of methods for sharing responsibility in specific cases difficult. To what extent the two agencies could eliminate duplication and delegate responsibility was still undetermined by the close of the year, but the search for common ground was continuing.

The chairmen made a joint announcement that they would seek closer working relationships also with the Federal Equal Opportunity Commission and with the human rights and equal opportunity units of other Federal agencies.\(^7\)

Programs such as these are obviously forward looking, commendable, and deserving of emulation. They not only keep municipal projects from becoming stagnant or from unconsciously being channeled in one direction, but they also prevent duplication of efforts between the agencies.

One suggestion for improvement would be the establishment, either by all municipalities within each state or by all municipalities within the nation, of some central office designed to keep municipal commissions abreast of recent developments in the fair employment practices area. An office of this type might also sponsor its own FEP seminars and could notify the local offices of other seminars, speeches, or conferences of interest. A harvest that goes unreaped because it is unnoticed is of no value. A central office of the type discussed would be a tremendous aid in avoiding this predicament.

D. Affirmative Action Programs

The fourth and final element that ought ideally exist to assure a maximum return from a municipality's investment in a FEP commission is the expansion of the commission's operations beyond the mere handling of complaints. Though the disposition of complaints is the primary function of any FEP commission, the commission must also develop programs of affirmative action


\(^{7}\) 1967 ANN. REP. OF THE NEW YORK CITY COMM'N ON HUMAN RIGHTS 11.
designed to fracture policies that perpetuate discriminatory employment practices if it is to operate effectively.\textsuperscript{71}

According to Steven Sacks, Assistant Counsel for the city of New York's Commission on Human Rights, this is exactly the approach that the New York commission is currently emphasizing:

\textit{[T]he City Commission on Human Rights has begun to take a broader approach to its objectives. The emphasis is shifting away from individual complaints and toward large-scale efforts involving the more sizable . . . employers. In this way the Commission hopes to work out agreements affecting hundreds and even thousands of . . . jobs at a time, rather than just one.}\textsuperscript{72}

An affirmative action approach is also being effectively employed by the Pittsburgh and Louisville human relations commissions. The commissioners and staff from each of these commissions gather information and meet with representatives from plants in their respective cities, even though no complaints have been filed. At these meetings the commissioners and staff investigate

\textsuperscript{71} This view was vigorously espoused by Edward J. Fortes, executive director of the New Haven Commission on Equal Opportunities. His remarks merit extended quotation:

\begin{quote}
While the handling of individual complaints is, and will remain an essential part of our function, we must shift gears and give greater emphasis to searching out solutions and programs which address themselves to the larger issues affecting the lives of the masses. The case-by-case approach, while it can give satisfaction to the individual complainant, rarely does more than just that. What is needed and what must become our major direction is the promotion of equal opportunities through positive programs that promote broad changes, meaningful not just for the individual complainant, but change which can create a better life for all persons who have been denied equality of opportunity in housing, employment, education or any other area, which if left uncorrected, produces the conditions Conant has aptly described "social dynamite." We must become increasingly identified with, and be a part of, the currents of change at work in New Haven. The major part of our function must be turned to work in the neighborhoods. We must support the principle of neighborhood self-determination, long a fundamental principle of participatory democracy, but too long denied to the Black man, the Puerto Rican and the poor. We must reinforce actively and \textit{publicly} encourage the trends toward self-awareness, dignity and self-sufficiency in these groups. We can no longer serve the amachronic, time-consuming and largely unproductive role of mediator and conciliator.
\end{quote}

\textsuperscript{72} Letter from Steven Sacks to James B. Flickinger, Nov. 24, 1969, on file with the \textit{Notre Dame Lawyer}. 

\textit{Winter, 1970}
discriminatory employment practices and patterns in the hiring and recruitment of minorities. Their purpose is not to obtain a job for any previously excluded minority-group individual. Rather, in the words of the Pittsburgh Commission:

The project focuses on obtaining jobs by identifying and eliminating the discriminatory system which previously excluded minority individuals and others similarly situated. The objective of the project is to increase the numbers of minority group individuals participating in the labor force, as well as the numbers of blacks actually hired, and to do so by eliminating the discriminatory practices and patterns which have excluded them.73

The Louisville program proceeds along the same lines and has enjoyed a modicum of success. For example, in 1968 four of the twenty-five companies chosen for study were found to be engaging in discriminatory hiring practices. Of these, the commission attempted and was able to persuade two to voluntarily sign “affirmative action agreements” whereby the companies undertook action on their own remedying the practice.74

Sponsoring conferences for leaders of industry is another method whereby municipal FEP commissions can encourage employers to ban discrimination in their companies. The form of the conferences and the types of topics that may be discussed are illustrated in the following excerpts from the 1968 annual reports of the Baltimore and Pittsburgh commissions. In Baltimore:

One of the Community Education Division’s most important education projects in 1968 was the Conference on Personnel Testing and Equal Employment Opportunity. Sponsored jointly by CRC, the Baltimore Metropolitan Area Manpower Project, and the Social Security Administration, the Conference was primarily intended for employers and their personnel managers. Civil rights leaders, public officials, and educators were also encouraged to attend.

Among the subjects considered at this seminar were the proper and improper uses of pre-employment and promotional tests, criteria for establishing reasonable job qualifications, ways to avoid cultural bias in personnel tests, innovations in test construction, the relation of tests to other evaluative and selection devices, the maximum utilization of manpower through tests, job engineering, employee motivation, the use of diagnostic tests in on-the-job training and how personnel directors in private industry can implement governmental guidelines.75

Similarly, in Pittsburgh:

On June 8, the Commission sponsored a one-day conference to discuss in depth the problems of minority-group employment in Pittsburgh. Co-sponsors were the Duquesne University School of Business Administration and the United States Equal Employment Opportunity Commission. Over 130 representatives of business, labor, industry, education, government, and the general community participated.

The need for such a conference was apparent: notwithstanding affirmative action programs by local employers, Plans for Progress, local, state and federal employment laws, and community pressure, the plight of the

black labor force remains substantially unchanged. Clearly, Pittsburgh must find means to pool all community resources in an effort to solve this problem. The Conference was divided into nine workshops: employer testing and minority group applicants; the psychological aspects of motivation; transportation; training programs; the “hard-core unemployed”; recruiting in the black community; publicity in the black community; the black businessman; executive, managerial, and professional positions for blacks.

Each workshop attempted to define the problems in its assigned area and propose solutions for them. The extent of the actual practical application of the proposed solutions will be determined in time. Of prime importance is the effect of the conference in creating awareness—awareness that the problems exist, cannot be ignored or complacently accepted, and require an activist approach to their solution.76

A project designed to train minority youth for a skilled trade upon leaving school is also an attractive alternative aimed at tearing down barriers to minority representation in industry. A program of this type has existed in Cleveland since 1966. There, the Cleveland Community Relations Board has conducted a “Skilled Trade Interest Program” aimed at developing in junior high school students “an awareness of the market and skills required for entry into a skilled apprenticeship program.” Through this program the board has attempted to give these students the background and knowledge necessary to meet apprenticeship requirements in Cleveland trade unions upon graduation from high school.77 Closely allied to this is a program initiated by the same organization to tutor minority group youths for examinations for admission to various apprenticeship programs.78 By qualifying minority individuals for entry into skilled trades, many of the barriers now confronting minorities will be obliterated for future generations.

Major emphasis has also been placed on youth by the Employment Committee of the Louisville Human Relations Commission. That committee is presently formulating legislation to revise their current Child Labor Law so as to make more jobs available to sixteen- to eighteen-year-olds. They do this in order to “remedy the serious problem of the school dropout who, because he is unable to get a job, engages in destructive social activities.”79

For similar reasons the Louisville commission has created a Youth Human Relations Commission.

In another effort to involve young people in constructive activities, particularly in the area of human relations, the Commission endorsed the recommendation of the staff that a Youth Human Relations Commission be formed consisting of 33 young people between the ages of 15-20 representing all segments of the community.

The purpose of the Youth Human Relations Commission is to promote and secure mutual understanding and respect among all economic, religious, racial, ethnic, and social groups in the metropolitan area of Louisville and Jefferson County with emphasis toward the sub-adults, and to act as

77 CLEVELAND COMMUNITY RELATIONS BD., REPORT OF ACTIVITIES JANUARY ’66 TO JUNE ’68 10-11 (1968).
78 Id. at 11.
79 HUMAN RELATIONS REVIEW [A QUARTERLY NEWSLETTER OF THE LOUISVILLE AND JEFFERSON COUNTY HUMAN RELATIONS COMM’N], FALL, 1969, AT 1, COLS. 1-2.
conciliator in controversies involving inter-group relations among young people.

... [The Commission] may serve as testers [sic] in compliance procedures, seek out violations of laws pertaining to youth, conduct and organize school surveys, hear testimony of alleged discrimination as it concerns the youth, and make recommendations to the Louisville and Jefferson County Human Relations Commission.

The Youth Commission will also have three (3) representatives as associate members of the Louisville and Jefferson County Human Relations Commission.80

Most commissions have authority to engage in activities and programs similar to all of these described above. Staff, time, and money, however, usually dictate how far each commission will go.

V. Conclusion

A municipal FEP commission can be a valuable asset to any city. Composed of members of the locality who are well aware of a city’s unique problems, the municipal commission is ideally suited to serve as the primary vehicle for curbing discriminatory employment practices within the community. Easily accessible and quick to react, the local commission obviously presents an enticing alternative to the potential complainant wary of bureaucratic entanglements at the state and federal levels.

But before a municipal commission can become a valuable asset there must first be a workable, effective ordinance. In nearly all the surveyed cities with FEP legislation, the ordinance is adequate. Pecuniary problems, however, have sapped much of their potential. Without money a sufficient and competent staff cannot be procured, and the needed affirmative action programs cannot be implemented.

Financial resources united with a workable ordinance, however, are still not enough. A commission can be relatively ineffective if it does not keep abreast of developments within the city, the commission, and the country. Problems are never settled if unknown. Communication with the community, with each other, and with other civil rights organizations is essential to resolve these issues.

FEP commissions must utilize a twofold approach. First, they must handle the complaints filed with them alleging unlawful employment practices. Second, they must initiate programs of affirmative action designed to shatter policies that currently perpetuate discrimination in employment. While all commissions have been relatively successful with the former approach, maturation of the latter is still required. Clearly, local commissions must now discover and destroy the cause of the disease rather than content themselves with salving isolated sores.

APPENDIX A

MODEL FAIR EMPLOYMENT PRACTICES ORDINANCE

ORDINANCE No. ———

AN ORDINANCE PROHIBITING DISCRIMINATORY PRACTICES BASED ON AGE, RACE, COLOR, CREED, SEX, RELIGION, ANCESTRY, PLACE OF BIRTH OR NATIONAL ORIGIN, WITH RESPECT TO EMPLOYMENT;\(^1\) CREATING A [insert name of city] FAIR EMPLOYMENT PRACTICES COMMISSION, AND PRESCRIBING ITS RESPECTIVE POWERS AND DUTIES; AND PROVIDING ENFORCEMENT PROCEDURES AND PRESCRIBING PENALTIES AND REMEDIES FOR VIOLATIONS.

Be It Ordained by the City Council of the City of [insert name of city] as follows:\(^2\)

SECTION 1. SHORT TITLE

This Ordinance may be cited as the "[insert name of city] Fair Employment Practices Ordinance."

SECTION 2. DECLARATION OF POLICY

It is hereby declared to be the policy of the City of [insert name of city], in the exercise of its powers for the protection of the public safety and the general welfare and for the maintenance of peace and good government, to assure equal opportunity in employment to all persons, free from restrictions because of age, race, color, creed, sex, religion, ancestry, place of birth, or national origin.\(^3\)

To accomplish these goals, it shall be the public policy of the City of [insert name of city] to prohibit discrimination in employment because of age, race, color, creed, sex, religion, ancestry, place of birth, or national origin.

SECTION 3. DEFINITIONS

When used in this ordinance, unless the context otherwise requires—

---

1 Not all cities prohibit all of these discriminatory acts. See note 25 supra. In order to ease the burden on the draftsman of a fair employment practices ordinance, all forms of discrimination currently condemned in any city are included in this model. The draftsman may strike any form that the city does not wish to prohibit.

Often an ordinance outlawing unfair employment practices will also ban discrimination in housing and public accommodations. This model ordinance contains no such provisions, although the possibility of including them ought be considered when drafting an ordinance of this type.

2 Note that the form for the enacting clause may be prescribed by statute or city charter. In many jurisdictions it has been held that any variation from the required form may result in invalidation of the entire ordinance. Thus, the precise language required by the statute or city charter must be followed.

3 For a comprehensive study of the constitutionality of municipal FEP ordinances see Note, Municipal Fair Employment Ordinances as a Valid Exercise of the Police Power, 39 Notre Dame Lawyer 607 (1964).
(A) "Commission" means the [insert name of city] Fair Employment Practices Commission.4
(B) "Discrimination," means any difference in treatment based on age, race, color, creed, sex, religion, ancestry, place of birth, or national origin.5
(C) "Employee" means any person employed by an employer other than the employer's parent, spouse, or child.
(D) "Employer" means any person in this City who employs four or more employees.6 The term, however, does not include religious, charitable, social, fraternal, or sectarian organizations7 unless supported in whole or in part by governmental appropriations.8
(E) "Employment Agency" means any person regularly undertaking to procure opportunities to work or to procure, recruit, refer, or place employees.
(F) "Labor Organization" means any organization existing for the purpose of: (1) collective bargaining; (2) dealing with employers concerning grievances, terms, or conditions of employment; or (3) other mutual aid or protection in relation to employment.
(G) "Person" means any individual or group of individuals, partnership, corporation, labor organization, employment agency, or other organization or association, including those acting in a fiduciary or representative capacity, whether appointed by a court or otherwise. The term "person," as applied to partnerships or other organizations or associations, includes their members, and as applied to corporations includes their officers.
(H) "Respondent" means any person alleged or found to have committed an unlawful employment practice.

SECTION 4. FAIR EMPLOYMENT PRACTICES COMMISSION

(A) There is hereby established a commission to be known as the [insert name of city] Fair Employment Practices Commission.9 The Commission shall consist of nine10 members who shall be residents of the City and broadly representative of the racial, religious, ethnic, and economic groups in the com-

---

4 Most commissions created in cities with FEP ordinances serve to enforce ordinances against discrimination in housing or in places of public accommodation as well as in employment. To avoid confusion, a city might therefore choose to name the commission something other than "Fair Employment Practices Commission" if the commission is expected to serve a number of purposes. Most of the cities surveyed followed this practice. See note 41 supra.
5 See note 1 supra, this Appendix.
6 A city may wish to make its ordinance more inclusive or less inclusive by lowering or raising this number. The surveyed cities ranged from one to fifteen employees as a requirement before an employer is subject to the provisions of the city's ordinance. There appears to be no unanimity on this point although several cities require that an employer have only one employee. See note 39 supra.
7 For a summary of various exclusions which the cities in this survey make from the "employer" classification, see note 38 supra.
8 Not all cities are concerned with whether or not the organizations receive appropriations from the government. Many exclude the organizations regardless. If the draftsman desires to exclude the organizations despite the fact that they receive funds from the government, he can conveniently do this by placing a period after the word "organizations" in this subsection and deleting the excess.
9 See note 4 supra, this Appendix.
10 The surveyed cities varied widely as to the number of members on the commission. See note 40 supra.
Members of the Commission shall be appointed by the Mayor and confirmed by the City Council. The terms of the members of the first appointed Commission shall be as follows:

(1) Three members to serve an initial term of one year;
(2) Three members to serve an initial term of two years; and
(3) Three members to serve an initial term of three years.

Thereafter the term of service shall be three years. Each member of the Commission shall continue to serve until his successor has been appointed and confirmed. A member of the Commission may be reappointed to successive terms of office.

(B) The Commission shall elect one of its members as Chairman and may elect such other officers as it considers necessary.

(C) The Commission's members shall serve without compensation, but shall be reimbursed by appropriations made by the City Council for all expenses necessarily incurred in the performance of their duties.

(D) Any member of the Commission may be removed for cause in accordance with the provisions in the [insert name of city] City Code governing the removal of City officials.

(E) All vacancies shall be filled by appointment for the unexpired term in the same manner as provided for original appointment.

(F) The Commission shall hold meetings at regular intervals but not less frequently than once each month. A majority of the members of the Commission shall constitute a quorum for the transaction of business.

SECTION 5. EXECUTIVE DIRECTOR

(A) The Mayor shall appoint an Executive Director and such other personnel as may be authorized by the City Council to assist the Commission in implementing, administering, and enforcing the provisions of this ordinance. In proposing a budget for the operation of the Commission and in selecting the Executive Director and other personnel that may be authorized by the City Council, the Mayor shall take into consideration the recommendations of the Commission.

(B) The Executive Director shall:

(1) Be a member of the bar of the State of [insert name of state];
(2) Receive a salary of $10,000 per year;

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11 The need for a commission composed of individuals having dissimilar backgrounds was emphasized by Russell B. Barbour, Executive Director of the Allentown Commission. Mentioning ways that local commissions can be strengthened, Mr. Barbour observed that: "A Commission must be composed of various segments of society and minority representation must be included." Letter from Russell B. Barbour to James B. Flickinger, Nov. 28, 1969, on file with the Notre Dame Lawyer.

12 Various other means of selecting the commissioners are also available. See note 40 supra.

13 These terms ought be adjusted if any change is made from this model in the number of commissioners, or if the term of the commissioner is changed. The terms of the original commissioners ought, however, be staggered in order to maintain continuity within the commission.

14 For a table that shows the various terms currently used in the surveyed cities, see note 40 supra.

15 A draftsman may wish to modify the frequency of these meetings. The table accompanying note 45 supra shows how often the commissioners in the cities which have FEP ordinances meet in practice, although the ordinance may allow them to meet less frequently.
(3) Serve a period of three years unless reappointed;¹⁶
(4) Serve as the Commission’s staff executive officer; and
(5) Strive to promote the efficient transaction of its business, the
orderly handling of complaints and other matters before the
Commission, and shall supervise the Commission staff.

(C) The Commission shall authorize the Executive Director to initiate
complaints of unlawful practices as set forth in this ordinance.

SECTION 6. POWERS AND DUTIES OF THE COMMISSION

The [insert name of city] Fair Employment Practices Commission shall:

(A) Initiate, receive, investigate, pass upon and seek the satisfactory
adjustment of complaints charging unlawful employment practices as set forth
in this ordinance;

(B) Hold hearings, issue subpoenas to compel the attendance of wit-
tnesses,¹⁷ administer oaths, take the testimony of any person under oath, require
the production of any evidence relating to any material under investigation or
any question before it, make findings of fact, issue orders, and make public its
findings of fact and orders;

(C) Issue any publications and results of investigations and research as
in its judgment will tend to promote good will and minimize or eliminate dis-
crimination in employment;

(D) Adopt, promulgate, amend, and rescind rules and regulations to
effectuate the policies and provisions of this ordinance;

(E) Certify, upon the request of any person, that a particular occupa-
tion or position is exempt from the provisions of this ordinance if it finds that
the occupation or position reasonably requires the employment of a person of a
particular age, race, color, creed, sex, religion, ancestry, place of birth, or na-
tional origin, unless the certification is sought as a means of circumventing
the spirit and purpose of this ordinance. The burden of proving the facts re-
quired for an exemption shall be upon the person making the request;¹⁸

(F) From time to time, but not less than once annually, render a written
report to the Mayor and City Council describing in detail the investigations,
activities, and other work it performed. The Commission’s recommendations
for whatever additional legislation it considers necessary to effectuate the pur-
poses of this ordinance may be included in the report; and

(G) Do all other things necessary and proper for the enforcement of
this ordinance.

SECTION 7. UNLAWFUL EMPLOYMENT PRACTICES

(A) It shall be an unlawful employment practice for any:

¹⁶ The draftsman may wish to modify the term of appointment.
¹⁷ Most commissions have been given subpoena powers. See note 45 supra.
¹⁸ Either this clause or section 7(B)(1) ought be eliminated from a city’s ordinance. This
clause gives the commission the power to exclude an employer from the prohibitions of this
ordinance with regard to a particular occupation or position. Section 7(B)(1) allows the
employer to initially determine whether or not a person of a particular age, race, color, creed,
sex, religion, ancestry, place of birth, or national origin must of necessity be employed. Under
section 7(B)(1), of course, the commission may still afterwards determine whether the necessity
actually existed if a complaint is filed by someone who claims he was discriminated against by
the employer.
(1) Employer to discriminate against any person with respect to hire, tenure, promotions, terms, conditions, or privileges of employment or with respect to any matter directly or indirectly related to employment;

(2) Employer, employment agency, or labor organization to discriminate by establishing, announcing, or following a policy of denying or limiting employment or membership opportunities to any person;

(3) Employer, employment agency, or labor organization prior to the employment or admission to membership of any person to:
   (a) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, creed, religion, ancestry, place of birth, or national origin of any applicant for employment or membership; or
   (b) Cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race, color, creed, religion, ancestry, place of birth, or national origin;

(4) Employment agency to fail or refuse to classify properly, refer for employment, or otherwise discriminate against any individual;

(5) Labor organization to discriminate against any person by limiting, segregating, or classifying its membership in any way that would:
   (a) Deprive or tend to deprive the person of employment opportunities;
   (b) Limit his employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment; or
   (c) Affect adversely his wages, hours, or conditions of employment;

(6) Employer, employment agency, or labor organization to penalize or discriminate in any manner against any individual because he has opposed any practice forbidden by this ordinance or because he has made a charge, testified or assisted in any manner in any investigation, proceeding, or hearing initiated under the provisions of this ordinance;

(7) Employer, labor organization, employment agency, or any joint labor-management committee controlling apprentice training programs to deny to or withhold from any person the right to be admitted to or participate in a guidance program, an

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19 Note that inquiries regarding age and sex are permissible.
20 Note that indication of preference with regard to age and sex is permissible.
apprenticeship training program, an on-the-job training program, or other occupational training program because of age, race, color, creed, sex, religion, ancestry, place of birth, or national origin;

(8) Employer motivated by an intent to circumvent the spirit and purpose of this ordinance to substantially confine or limit recruitment or hiring of employees to any employment agency, employment service, labor organization, training school, training center, or any other employee-referring source serving persons who are predominantly of the same age, race, color, creed, sex, religion, ancestry, place of birth, or national origin;

(9) Individual seeking employment to publish or cause to be published any advertisement that discloses or in any manner expresses his race, color, creed, religion, ancestry, place of birth, or national origin, or in any manner expresses a limitation or preference as to the race, color, creed, religion, ancestry, place of birth, or national origin of any prospective employer; or

(10) Person to:

(a) Aid, abet, incite, compel, or coerce the doing of any act declared herein to be an unfair employment practice;
(b) Obstruct or prevent any person from complying with the provisions of this ordinance; or
(c) Attempt directly or indirectly to commit any act declared by this section to be an unfair employment practice.

(B) It shall not be an unlawful practice for any employer to:

(1) Discriminate in the hire of any applicant where the position reasonably requires the employment of a person of a particular age, race, color, creed, sex, religion, ancestry, place of birth, or national origin and the qualification is not adopted as a means of circumventing the spirit and purposes of this ordinance, or

(2) Discriminate in the hiring of any person where the position to be filled is that of a domestic or of a personal or confidential nature.

SECTION 8. COMPLAINT PROCEDURE

(A) COMPLAINT

(1) A complaint stating the name and address of the person alleged to have committed the unlawful discriminatory practice, the facts and circumstances giving rise to the act complained of, and any other information required by the Commission, may

21 Note that an individual may express his age and sex or express his preference as to the age and sex of his employer.
22 A few cities limit this exception only to cases where religion, national origin, ancestry, or sex is the bona fide occupational qualification. See, e.g., Washington, D.C., Commissioner's Order No. 65-768, § 3(4), June 10, 1965; South Bend, Ind., Code ch. 12, § 7(d) (1962).
23 See note 17 supra, this Appendix.
24 For a summary of the use of this exception, see text accompanying note 40 supra.
be made, signed, and filed with the Commission by: 25
(a) An individual, or his attorney, if the individual claims to
be aggrieved by an unlawful discriminatory practice;
(b) An employer whose employees hinder or threaten to
hinder compliance with the provisions of this ordinance;
or
(c) the Commission or its Executive Director.
The Commission shall take no action on any complaint filed
with the Commission more than thirty days after the alleged
unlawful practice. 26 If a complaint is filed by an employer
under subsection (b), no hearings, orders, or other actions
shall be taken by the Commission against the employer during
the period that conciliation or other remedial action is engaged
in pursuant to the employer’s complaint.

(2) The Complainant may amend a complaint at any time before
a hearing is held.

(B) INVESTIGATIONS
(1) After the filing of the complaint the Commission shall consider
the complaint and may, by majority vote, refer the complaint
to the appropriate section of the Commission’s staff for prompt
investigation. The results of the investigation shall be reduced
to written findings of fact.
(2) If the Commission finds there is no probable cause for believing
that an unlawful practice has been or is being committed, it
shall, within thirty days 27 from such determination, issue and
cause to be served upon the Complainant a written notice of
its findings and a declaration that the complaint will be dis-
missed unless the Complainant or his attorney files a request for
a review hearing with the Commission within ten days 28 after
service. Upon request for a review hearing the Commission
shall provide the Complainant and his attorney (if any) with
an opportunity to appear before the Commission or (at the
election of the Commission) a Commission member or staff
representative, to present any additional information tending to
support the allegations of the complaint. If, after the review
hearing, the Commission or its representative determines that
there is no basis for the allegation, the complaint shall be
dismissed.
(3) If the finding is made that there is probable cause for believing

25 For a listing of persons granted the power to file a complaint in the surveyed cities, see
note 46 supra.
26 Many cities place no limitation on the time during which complaints may be filed. See
note 48 supra. This provision may be eliminated if the city chooses to place no limit on the
time allowed for receiving complaints, or the number of days may be altered if the city desires
to further extend or limit the filing period.
27 The draftsman may wish to modify the allotted time.
28 The draftsman may wish to modify the allotted time.
that an unlawful practice has been or is being committed, the Commission's staff shall be directed to endeavor to eliminate the unlawful practice by conference, conciliation, and persuasion. The Commission's staff may require the elimination of the unlawful practice and, as a condition to settlement, may demand the upgrading, reinstatement (with or without back pay), hiring, or acceptance in any respondent labor organization of any employee discriminated against. If an agreement is reached for the elimination of the unlawful practice as a result of such conference, conciliation, or persuasion, the agreement shall be reduced to writing and signed by the Respondent. An order shall then be entered by the Commission setting forth the terms of the agreement. If no agreement is reached, a written finding to that effect shall be made with a copy delivered to the Complainant and a copy delivered to the Respondent.

(4) Neither the Commission nor its staff may disclose information obtained in the course of an investigation; nor may any publicity be given to the filing of a complaint or to any negotiations prior to a hearing on the complaint.

(C) Hearings

(1) In case of failure to reach an agreement for the elimination of an unlawful employment practice and the entry of findings to that effect, the file of the proceeding shall be certified by the Executive Director to the Chairman of the Commission. The Chairman shall then appoint a hearing tribunal of five or more commissioners to hear the complaint. He shall also issue and cause to be served upon the Respondent a copy of the original complaint and any amended versions thereof, a copy of the findings of fact, and a written notice of hearing. The notice shall specify the date, time, and place at which the Respondent must answer the charges of the complaint. The hearing shall be held not less than ten nor more than thirty days after service of notice.

(2) The Respondent may file a written answer to the complaint, appear at the hearing, be represented by counsel, submit testimony, and confront and cross-examine witnesses.

(3) At the hearing:
   (a) The tribunal may permit amendment to any complaint or answer;
   (b) Testimony shall be under oath and recorded;

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29 An individual city may desire to change this requirement to include more or fewer commissioners, the entire commission, or some other body chosen by the commissioners.

30 Not all cities put such a time restriction on when a hearing must be commenced. The draftsman may desire to eliminate or modify this requirement.
(c) The case for the Complainant shall be presented by the City Attorney or his delegate;

(d) The tribunal shall not be bound by the rules of evidence prevailing in the courts of law or equity but shall take into account all reliable, probative, and substantial evidence produced at the hearing that may tend to prove or disprove the existence of a discriminatory act or practice; and

(e) No person shall be compelled to be a witness against himself.

(4) The Complainant shall be a party to the proceeding. Any person who is an indispensable party to a complete determination or settlement of a question involved in a proceeding shall be joined. Any person who has or claims an interest in the subject of the hearing may, in the discretion of the Commission, be permitted to appear.

(5) If, upon all the evidence, a majority of the tribunal finds that the Respondent has engaged in any unlawful practice, it shall state its findings and recommendations and certify them to the Commission. The Commission shall issue and cause to be served on the Respondent an order requiring him to cease and desist from the unlawful practice and to take whatever affirmative action will effectuate the purpose of this ordinance. The Commission may also require the Respondent to file a report showing compliance and the procedures he has adopted to effect compliance.

(6) If the Commission determines that the Respondent has not engaged in any unlawful practice, the Commission shall state its findings of fact and dismiss the complaint. Notice of such action shall be delivered to the Complainant and Respondent by registered mail.

(7) A party aggrieved by any order of the Commission may appeal to any court of competent jurisdiction within thirty days after the Commission mails notice of the order to the aggrieved party.

(8) If no appeal is taken within thirty days, the order of the Commission shall be final and not subject to review by any court in any action, including any proceedings to obtain enforcement.

(D) Enforcement

In the event the Respondent refuses or fails to comply with any order of the Commission, the Commission may certify the case and the entire record of its proceedings to the City Attorney who shall invoke the aid of the appropriate court to secure enforcement or compliance with the order, or to impose the penalties as set forth in Section 9, or both.

Section 9. Penalties

Any person who shall wilfully resist, prevent, impede, or interfere with the
Commission, its members, agents, or agencies in the performance of duties pursuant to this ordinance, or shall fail, refuse, or neglect to comply with any decision or order of the Commission, or any person who knowingly makes a false complaint under this ordinance shall be guilty of a misdemeanor punishable by imprisonment for not more than one year, or fine of not more than five hundred dollars, or both, in addition to any penalties or decrees imposed by order of any court.\footnote{31}

\section{10. Severability}

If any clause, sentence, paragraph, or part of this ordinance, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this ordinance.

\section{11. Effective Date}

This ordinance shall become effective on [insert date].

\footnote{31 The draftsman may wish to modify these penalties. See text following note 52 \textit{supra} for a summary of the various penalties that the surveyed ordinances currently impose.}
The following regulations adopted by the Pittsburgh Commission on Human Relations exemplify the internal rules that a municipal FEP commission may promulgate to regulate its operation. FEP ordinances generally permit the commissions to determine their own rules and regulations in administering the ordinance. Hence, provisions such as these exist in nearly every municipality having an FEP ordinance.

REGULATIONS OF THE PITTSBURGH COMMISSION ON HUMAN RELATIONS

CHAPTER I
RULES GOVERNING PROCEDURE BEFORE THE PITTSBURGH COMMISSION ON HUMAN RELATIONS

RULE 1—DEFINITIONS
In addition to the definitions included in Ordinance 75 of 1967 of the City of Pittsburgh, the Commission outlines the following for its use in specifying its rules. When used in these rules:

(a) The term “Human Relations Ordinance” shall mean Ordinance No. 75 of 1967 of the City of Pittsburgh.
(b) The term “Commission” shall mean the Commission on Human Relations.
(c) The term “Chairman” shall mean the duly elected Chairman of the Commission on Human Relations.
(d) The term “Executive Director” shall mean the Executive Director of the Commission on Human Relations.
(e) The term “Meeting Panel” shall mean any individual Commissioner or group of two or more members of the Commission when so authorized by the Commission.
(f) The term “Investigator” shall mean an official representative of the Commission assigned to investigate the complaint on file before the Commission.
(g) The term “unlawful discriminatory practices” shall mean only those unlawful discriminatory practices specified in Ordinance 75 of 1967 of the City of Pittsburgh.
(h) The term “complainant(s)” shall mean any person, group of persons or organizations claiming to be aggrieved by violation of any one or more of the prohibited acts set forth in Ordinance 75 of the Commission on its own motion.
(i) The term “organization” shall mean any organization which has as one of its purposes the combating of discrimination or the promotion of equal opportunities.
(j) The term “respondent(s)” shall mean those persons specified in Ordinance 75 of 1967 of the City of Pittsburgh.
(k) The term “party” or “parties” shall mean the complainant and/or the respondent.
(l) The term “complaint” shall mean a notarized complaint filed on the form provided for this purpose by the Commission.
RULE 2—COMPLAINT

(a) Who May File
Any person, group of persons or organization claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission, on a form provided by the Commission, a complaint in writing. The Commission may, on its own motion, initiate a complaint as defined in Rule 3.

(b) Form
The complaint shall be in writing on a form provided by the Commission, the original being signed and verified before a notary public. Notarial service shall be furnished without charge by the Commission offices. A complaint filed by a group of persons shall be signed by each person in the group.

(c) Contents
A complaint shall contain the following:

(1) The full name and address of person, or persons, or organizations making the complaint, hereinafter referred to as the “complainant(s).”

(2) The full name and address of the owner or person alleged to have committed the alleged unlawful discriminatory practice complained of, hereinafter referred to as the “respondent(s).”

(3) [Omitted]

(4) The alleged unlawful discriminatory practice and a statement of the particulars thereof.

(5) The date or dates of the alleged unlawful discriminatory practice and, if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred.

(d) Place of Filing
A complaint shall be filed with the Commission on Human Relations at its offices with the exception of instances in which the Executive Director authorizes completion and verification of a complaint in the presence of a Commission investigator outside the Commission office. Complainant may be required to pay notary fees under the above circumstances.

(e) Time of Filing
A complaint may be filed before the Commission at any time after the alleged unlawful discriminatory practice is reported to have occurred.

(f) The complainant(s) shall have the power to reasonably and fairly amend the complaint under the same conditions as the original complaint.

RULE 3—COMMISSION COMPLAINT

(a) Initiation
Whenever the Commission has information whereby it has reason to believe
that an unlawful discriminatory practice has been practiced, such Commission may at a regular or special meeting, a quorum of five Commissioners present, on its own motion initiate a complaint, or the Commission may authorize the Executive Director to file a complaint.

(b) Form

A Commission complaint shall be prepared on a form which shall not require notarization, shall be signed by the presiding officer of the meeting authorizing the complaint and shall include the content set forth in Rule 2(c) with the exception of Item 1.

RULE 4—INVESTIGATION

(a) After the filing of a complaint and the determination that it falls under the jurisdiction of the Commission, the Executive Director shall order prompt investigation of the allegations of the complaint.

A determination of jurisdiction shall be initiated within one business day after the end of the business day on which the complaint is filed or as soon thereafter as possible.

(b) At the next official Commission Case Conference Board meeting following the acceptance of the complaint, records and reports of investigation on the case shall be received.

If a private meeting is deemed advisable, a Commissioner, as assigned above, shall be designated as chairman of the meeting and shall assume all responsibilities, together with any other members of the panel as set forth in Rule 6.

(c) Discovery

The Executive Director may order the investigators to submit interrogatories to the respondent or witnesses, or procure the deposition of or a statement from the respondent or witnesses.

(d) Nondisclosure of Facts

With the exception of conditions noted in preparation for a public hearing the members of the Commission and its staff shall not disclose what has transpired in the course of endeavors to conciliate.

(e) Terms of Adjustment

If the endeavors of the Commission to adjust succeed, the Executive Director shall notify the party or parties by mail of the terms of adjustment. Both parties shall have the right to apply to the Commission for reconsideration of such terms of conciliation in accordance with Rule 5.

(f) Dismissal

If after investigation of the complaint no reasonable cause for the complaint is found, a report in writing shall be made, stating reasons for dismissal of complaint, to the Executive Director. If the Executive Director concurs in the recommendation for dismissal, he shall transmit this recommendation to the Case Conference Board at its next regular meeting. If there is concurrence, the Executive Director shall then immediately notify the party or parties by mail. In addition either party shall be notified of the right to apply to the Commission for reconsideration of such dismissal within 10 days after receipt of notice. When a recommendation for dismissal is rejected the complaint shall be ordered back into procedure under these rules without prejudice to the parties.
RULE 5—RECONSIDERATION BY THE COMMISSION

Either party may apply to the Commission for a reconsideration of the final disposition of the complaint as set forth in Section 13(d) of Ordinance No. 75 of 1967 of the City of Pittsburgh.

RULE 6—PRIVATE MEETINGS

In case of failure to eliminate unlawful discriminatory practices by staff negotiations, the Chairman may order a private meeting.

(a) Commission Meeting Panel

The Chairman may appoint a panel consisting of one or more members of the Commission to hear such complaint. The Chairman shall designate one of the members of the panel as the presiding member as outlined in Rule 4(b).

(b) Conduct of Meetings

The Meeting Panel shall have full authority to control the procedure of all meetings, to rule upon motions and objections, and to admit or exclude testimony or other evidence and shall not be bound by the strict rules of evidence or the procedure in court.

(c) Function of the Meeting Panel

The Meeting Panel shall attempt to adjust the complaint. If the matter is not adjusted then the following shall prevail: If, upon all the evidence, the Meeting Panel shall find that a respondent has engaged in the alleged discrimination complained of, it shall so state its findings of fact, and shall issue and file the same with the Commission. If the Meeting Panel shall make a finding of "no cause" in favor of the respondent, it shall issue and file with the Commission its recommendation for dismissal of the complaint.

(d) Upon receipt of the findings and recommendations of the Meeting Panel, the Commission shall make a decision, which decision shall be based upon the finding of facts made by the Meeting Panel.

(e) The Commission decision shall be sent by mail to the complainant, if any, and respondent. This notice also shall contain a statement that either party may for good cause apply for reconsideration as stated heretofore.

RULE 7—PROCEDURE FOR PUBLIC HEARING

(a) Definitions

(1) Public Hearing—A public hearing is the hearing provided for in Ordinance 75 of 1967 of the City of Pittsburgh to be held after the Commission has determined that probable cause exists for the allegations made in the complaint and attempts by the Commission to eliminate the unlawful practice by persuasion have been unsuccessful.

(2) Complainant—An aggrieved individual, or an organization which has as one of its purposes the combating of discrimination or the promotion of equal opportunities.

(3) Respondent—Any person, partnership or corporation, or the officers thereof, who or which is alleged to have committed an unlawful practice as set forth in the above Ordinance.

(4) Commission—The Commission on Human Relations established pursuant to Ordinance 75 of 1967 of the City of Pittsburgh.
(5) Hearing Committee—The Hearing Committee shall be a committee of one or more members of the Commission appointed by the Chairman, as provided by Section 13(h) of Ordinance 75 of 1967 of the City of Pittsburgh, for the purpose of conducting the public hearing.

(b) Appointment of Hearing Committee

(1) A public hearing may be called only by action of the majority of the members of the Commission. The Chairman shall designate one of the Hearing Commissioners as the presiding member at the public hearing.

(2) Wherever possible, the Hearing Commissioners shall not include Commission members who participated in the investigating of the complaint or in conciliation proceedings.

(c) Attorney for the Commission

The City Solicitor or his representative shall serve as legal advisor to the Hearing Committee and as attorney for the Commission for the purposes of the hearing.

(d) Time and Place

Hearings shall be held at a time and place designated by the Chairman of the Hearing Committee.

(e) Notice

(1) The Commission, through its staff, shall serve upon the respondent at least ten (10) days before the public hearing:

(A) A statement of the charges made in the complaint; and

(B) A notice of the time and place of hearing.

(f) Answer

Respondent shall have the right to file an answer to the complaint. Unless otherwise provided, the answer shall be filed no later than five (5) days before the scheduled date of the hearing.

(g) Subpoenas

All parties shall have the right to obtain from the Commission subpoenas and subpoenas duces tecum. Parties shall serve their own subpoenas and make returns of service on forms provided by the Commission.

(h) Appearance

(1) The complainant shall be present and may present oral testimony or other evidence and examine and cross-examine witnesses in person or by counsel.

(2) The respondent may appear at the hearing in person, or by counsel may submit oral testimony and other evidence in support of said answer, and may cross-examine witnesses.

(3) In the discretion of the Hearing Commissioners, any person or organization having an interest in the proceedings in which a public hearing is being held may be allowed to intervene, in person or by counsel, for such purposes and to such extent as the Hearing Commissioners shall determine.

(i) Procedure

(1) The circumstances surrounding the complaint shall be presented before the Hearing Commissioners by the City Solicitor, or his representative. He
shall have the right to call the complainant, the respondent, or others, as witness,
as and to cross-examine all witnesses.

(2) The Commission shall not be bound by the strict rules of evidence
in the conduct of the public hearing.

(3) The Hearing Commissioners shall have full authority to control the
procedure of the hearing, to admit or exclude testimony or other evidence, and
to rule upon all motions and objections.

(4) The Hearing Commissioners may call and examine witnesses, request
the production of papers or other matter present in the hearing room, and
direct the City Solicitor or his representative to introduce documentary
or other evidence.

(5) A stenographic record of the proceedings shall be made by the
Commission. A copy of the record shall be available to all parties to the
proceedings.

(6) All rulings and determinations made by the Hearing Commis-
sioners shall be by a majority vote.

(7) Oral stipulations may be made on the record at open hearing.

(j) Continuation and Adjournments

The Hearing Commissioners may continue a hearing from day to day or
adjourn it to a later date or to a different place by announcement, thereof, at
the hearing or by appropriate notice to all parties.

(k) Oral Arguments and Briefs

The Hearing Commissioners shall permit the parties or their attorneys and
the Commission’s attorney to argue orally before them and to file briefs within
such time limits as the Hearing Commissioners may determine.

(l) Findings of Fact

All orders issued by the Hearing Commissioners shall include general
findings of fact based upon the total record and a specific finding on the alleged
unfair practices and violations as defined in the Ordinance.

(m) Orders

(1) Within a reasonable time after the conclusion of the hearing, the
Hearing Committee shall issue such orders to the respective parties as the find-
ings of fact shall warrant. Any order of the Hearing Committee shall be con-
sidered as the order of the Commission, unless other action is taken by the
Commission.

(n) The Commission may order the dismissal of the complaint; it may
order the respondent to cease and desist from the commission of discriminatory
acts in violation of the Ordinance of the City of Pittsburgh, or such other action
as the Commission deems necessary or appropriate.

(o) Enforcement

In the event the respondent fails to comply with any order issued by the
Commission, or where otherwise appropriate, the Commission shall certify the
case and the entire record of its proceedings to the City Solicitor for appropriate
action to secure enforcement of the Commission’s order.
The following is an excerpt from the 1967 Annual Report of the New York City Commission on Human Rights. It is inserted in this appendix to illustrate several different affirmative action programs used by New York City to combat discrimination. It suggests several approaches to solve FEP problems, any one of which could easily be utilized by almost any city having an FEP ordinance.

**Equalizing Employment Opportunities**

In spite of a small staff which at times amounted to a one-man operation, the Commission Business and Employment Division was aggressively engaged throughout the year in persuading key companies and industries to re-examine their employment policies and develop positive programs for the recruitment and training of minority group employees. After a company or industrial group had agreed to adopt a workable program, developed in consultation with Commission staff, the continuing responsibility would be turned over to the Human Resources Administration to provide the needed follow through services.

An outstanding example of such affirmative action was the recruiting program initiated by the Commission in cooperation with the banks of the New York Clearing House and the City Department of Labor. Under this program, personnel recruiters for the banks went into ghetto communities to interview job applicants in their local communities. The program resulted in more than 2,000 jobs for minority group workers. Its success encouraged other companies to follow the same pattern of recruiting not only in New York City but even more spectacularly in Detroit in the aftermath of racial disturbances in that city.

Encouraged by the success of the bank program, the Commission staff began tailoring the concept of direct personnel recruiting in ghetto areas to the needs of the air transport industry in New York City, and initial moves were made to encourage affirmative employment programming.

Personnel figures for airlines operating in this city were obtained and evaluated, and conferences were held with such leading lines as Eastern, Pan American, TransWorld, and United with the objective of setting up recruitment and training programs in cooperation with the Manpower and Career Development Agency of the Human Resources Administration.

Progress along these lines was slow but steady. A natural target population for the project was the South Jamaica community of Queens which is adjacent to Kennedy Airport and which has a predominantly Negro population that suffers from chronic underemployment. In this project the cooperation of the Jamaica Chamber of Commerce and the Jamaica Community Corporation was successfully enlisted.

Major advances also were made in the public utilities by enlisting the cooperation of such large-scale employers as Consolidated Edison, New York Telephone, and Jamaica Water Supply in working out precedent-breaking measures for integrating their work forces.

Consolidated Edison, a giant among public utilities in the New York metropolitan area, held a recruiting "week" in June under Commission auspices.
at the Puerto Rico Project in East Harlem through which job opportunities were offered to Puerto Ricans. The company also cooperated with the Commission in providing training programs for school dropouts.

In August, Negro telephone company employees complained to the Commission that they were caught in a crossfire of differences in a labor-management dispute which had given rise to a backlash reaction in the union against Negroes. The Commission suggested that New York Telephone and the union join in sponsoring an on-the-job training program which proved highly successful in resolving the dispute and in providing training.

Patient negotiations with the Jamaica Water Supply Company, whose employment policies had been under constant scrutiny by the Commission's Contract Compliance unit since February 1966, resulted in an agreement reached in May, 1967 that the company henceforth would obtain all its new recruits from the Jamaica Community Project Center until its total work force represented a just ethnic balance. The plan worked very well. The company's program of affirmative recruitment was found acceptable by the Commission and review of its employment practices were [sic] conducted at longer intervals.

**Retail Industry Program**

The Retail Industry Affirmative Action Program, sponsored by the City Commission on Human Rights and subsidized by a $20,000 grant from the Federal Equal Employment Opportunity Commission, is a one year pilot program. It was designed to implement the recommendations of a survey of the employment practices of sixty-two retail stores in the New York Metropolitan area. This survey, conducted in 1966 by two university professors under an EEOC grant, found that Negroes and Puerto Ricans were concentrated in the low-grade paid jobs in the industry and rarely were found in positions of supervisory and administrative responsibility or at executive levels.

By the end of 1967 the project director had completed interviews with officials of all stores involved in the project and was working with them to draft affirmative action programs fitted to each firm's needs. These programs broadly included re-affirmation by the company of a policy of equal employment opportunity and adoption of a written affirmative action program, the dissemination of this policy through all echelons of the company, the assignment of definite responsibilities within management for implementation of recruitment and training, review of placement and promotion of minority group employees already on the payroll, training and education programs, and equal treatment in all other matters affecting employees.

On October 4 and 14 the Retail Industry Affirmative Action Program presented two special shows on "Careers in Retailing" over radio station WWRL, produced by the City Commission on Human Rights. They were planned to project a picture of the retail industry accurately reflecting its progress in the area of equal employment opportunity and advancement.

A one-day conference on recruitment and placement of the minority employee in the retail industry was held on November 7 in cooperation with the New York State School of Industrial and Labor Relations at Cornell University.
Top executives of the retail industry attended the sessions at the Sheraton Atlantic Hotel and participated in discussions of the problems of hiring and upgrading minority employees with experts in various specialties of personnel relations. Deputy Mayor Timothy Costello and Human Rights Chairman Booth both addressed the conference.

Starting in November, the Retail Industry Affirmative Action Program began issuing a newsletter to keep the retail industry abreast of developments and what the Commission and the community are doing in related areas.¹

APPENDIX D

The following Memorandum of Agreement was entered into by the Pennsylvania Human Relations Commission and the municipal commissions in Philadelphia, Pittsburgh, and Erie. It illustrates one informal type of cooperation that can exist between the state and local commissions.

MEMORANDUM OF AGREEMENT

This memorandum revises and amends the original Memorandum of Agreement between the State and Municipal Commissions in terms of the basic statutes and ordinances enacted since October 25, 1955. This constitutes the basis on which the work of the State and Municipal programs will be conducted cooperatively.

I. General principles to which specific activities of the two agencies shall be accommodated.

A. All considerations shall be held in the nature of a "Memorandum of Understanding" and not construed as a fixed or formal agreement.

B. The State Commission will proceed on the principle that the local agency may "carry the work load" within the City, thus permitting the State Commission to concentrate its efforts in the many cities and counties which are without the benefit of such laws.

C. While it would be illegal to delegate authority to the local agency to carry out the State program, either in respect to general educational efforts or the processing of formal complaints and to provide financial assistance to the City agency to do so, nevertheless, such programs will be carried on cooperatively to the fullest possible extent, and general educational projects, in particular, conducted jointly by both the City and the State.

D. Activities will be conducted in the spirit of Section 12, subsection B, reading "nothing contained in this Act shall be deemed to repeal any of the provisions of any Municipal Charter."

II. Procedural Detail

A. Handling of complaints wherein alleged acts of discrimination fall under the jurisdiction of State and City agencies concurrently.

1. It is recognized that the final choice of what agency shall act in behalf of a complainant rests with the complainant himself. However, interviewers may proceed in recognition of the fact that the Municipal agency may be in the logical position to handle complaints ordinarily falling under its jurisdiction, particularly in view of a well established relationship between the City agency and the local respondent groups involved.

2. Where the complainant so decides and where the respondent maintains offices in other sections of the State as a part of municipal industry, responsibility may be assumed by the
State, even though the case originates in the ordinance city. It is anticipated, however, that the surveillance of the Municipal agencies may continue in the situations where the respondent's branch activities or offices or plants are purely secondary beyond but near to City limits.

In instances where a complaint has been filed with the city agency alleging discrimination in housing, or public accommodations, wherein the property or place of public accommodations is situated within the city but the respondent resides outside the city, the complaint will be referred to the State Human Relations Commission which shall assume full jurisdiction.

3. Cases related to individual businesses or respondents located solely within the City will be the primary responsibility of the City agency, and the State will so refer any such cases coming first to its attention, assuming this option is taken by the complainant after impartial interpretation of available services.

4. Referrals from the State to the Municipal agencies or vice versa, shall be made insofar as possible, prior to the beginning of any investigation rather than during or after.

5. It is understood that responsibility for the handling of situations involving community tension and/or violence in housing, public accommodations or employment which occur in the City, will remain with the City agency. However, State and City Commissions will cooperate fully as the occasion may demand.

B. Handling of Non-concurrent Cases.

1. The State automatically shall refer to the City agency, all complaints of the following character:
   (a) Complaints involving employers of less than six (6) employees. (This does not apply to the Pittsburgh Commission which also has a cut-off point of six (6).)
   (b) The State Commission and the Philadelphia Commission may not process complaints filed by civic organizations whereas the laws of Pittsburgh and Erie permit them to do so. Therefore, when a complaint is referred to the State Commission by a civic agency which relates to Pittsburgh or Erie, same may be referred to these Municipal agencies or retained by the State if there is sufficient reason for the State to initiate a complaint in its own name. However, when a complaint is referred to the State agency by a civic organization in Philadelphia, a joint decision will be made as to whether the State or the City will pursue the problem by initiating a complaint under their
respective individual auspices.

2. The City agency shall refer to the State, all complaints not within its jurisdiction, namely, complaints covering:
   (a) Age questions including illegal advertisements.
   (b) State employees.
   (c) Cases related to discrimination against a City resident occurring outside the City which come first to the attention of the City agency will be referred to the State.
   (d) Complaints reported after a lapse of sixty (60) days from date of alleged discrimination. (Does not apply to Philadelphia which has a notification period of ninety (90) days as does the State.)

3. With respect to the State Fair Educational Opportunities Act, a cooperative relationship will prevail between the State and the City agency. It is understood that all compliance matters will be handled by the State Commission.

C. Exchange of Case information between State Commission and Municipal Commission.
   1. The State case control system will be operated in the headquarters office of the State at Harrisburg, however, referrals from the City agency, except Equal Employment Opportunity Commission referrals, may be made direct to the regional office of the Commission if desired, to expedite the referrals. It is the responsibility of the State regional office to refer cases coming thus to its attention on to Harrisburg for assignment of official docket number for record and clearance.
   2. The State and City agencies will provide each other, upon request, information on cases received, insofar as those cases pertain to matters of mutual interest.
   3. The Municipal Commission shall provide the State Commission a statistical summary of all cases handled during each calendar year.
      The object of this is to enable the State Commission to present a complete picture of the situation as it exists throughout the Commonwealth, in the required annual report to the Governor. The report will place credit properly for such service performed.

D. Educational Projects and Programs.
   1. It is agreed that educational activities will be conducted jointly between State and City agencies insofar as possible. Officers of the State and City Commission shall meet to consider individual projects as they are proposed, and at that point determine where joint participation can be utilized effectively.
2. The State will incorporate a summary of such joint educational programs in its report to the Governor.

3. It is agreed that the State establish Advisory Councils only in communities where Municipal agencies with enforcement powers are lacking.

4. Where the regulations of the State Commission call for the posting of law, joint posters may be utilized whenever feasible.

5. Either agency may issue press releases, announcements, over its own imprimatur regarding its own activities at its own discretion. However, exchange of copies are considered appropriate.¹ (Footnote omitted.)

Appendix E.

GEOGRAPHICAL LOCATION OF STATE AND LOCAL FEP LAWS

States tinted gray have enacted state FEP legislation; untinted states have no FEP legislation on the state level.

All cities with a population exceeding 100,000 (1960 census) are designated by a circle on the map. If a city has a municipal FEP ordinance, the circle has been filled in; if it has no FEP ordinance, the center of the circle remains hollow.