



CITY OF RAPID CITY

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MEMORANDUM

TO: Legal and Finance Committee

CC: Public Works Committee
Mayor Hanks
Kevin Thom
Jim Preston

FROM: Jason E. Green, City Attorney

DATE: April 2, 2008

RE: Human Relations Commission

INTRODUCTION

My office has determined that the current Human Relations Commission was created under a valid ordinance enacted by the Council. However, reconstituting the Human Relations Commission as currently structured presents a significant and substantial liability risk to the City. Therefore, I recommend adopting an amended ordinance to create a Human Relations Commission with more limited authority, similar to the Community Relations Commission.

DISCUSSION

My office has been directed to research the legality of the Rapid City Human Relations Commission (hereafter "HRC") in response to a request by citizens to reappoint members to the Commission. The HRC was created by ordinance. The relevant provisions of the municipal code are contained in Chapter 2.64. After reviewing the provisions of Chapter 2.64, I have determined that this ordinance is permissible under state law. Specifically, SDCL Chapter 20-12 empowers municipalities to adopt human relations commissions. See SDCL 20-12-5. Further, it



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appears that all of the powers that are currently granted to the HRC by Rapid City's ordinance are authorized by state law. Therefore, it is my conclusion that the ordinance was an appropriate exercise of the City's legislative authority.

Notwithstanding the ability of the City to create a local human relations commission, I believe that reconstituting the HRC under the existing ordinance presents a significant and substantial liability risk to the City and its taxpayers. In accordance with the authorization contained in state statute, the HRC has the power and authority to issue subpoenas, examine witnesses, administer oaths, take testimony, require the production of books and papers, and to take, "other affirmative action as in the judgment of the [HRC] will effectuate its purposes." See, RCMC § 2.64.100(C).

It is clear that the HRC has broad authority to require citizens to appear and to produce information. But the authority of the HRC goes far beyond mere investigation. The HRC is authorized to require a person who is subject to investigation by the HRC to, "rent, sell, or lease housing to a complainant or to award actual damages," "to hire, reinstate or upgrade employees with or without back pay", and if the applicant is an employment agency, the HRC can require the agency to refer the persons for employment. The HRC can also require labor organizations to admit members to the organization and to admit people to its apprentice programs, and its on the job training programs. The HRC can also require employers, landlords and employment agencies to make reports to the Commission. See, RCMC 2.64.100(C) and SDCL §§ 20-12-6 and 20-13-42. These powers far exceed the authority currently vested in the City Council in any other matter.

I think it is clear from reviewing the authority currently granted to the HRC that significant and substantial rights of individuals are implicated by its activities. As such, I have significant due process concerns with regard to the operation of the HRC. Any failure by the HRC to follow the constitutional mandates to provide due process of law would result in a violation of a citizen's civil rights. This would potentially expose the City and its taxpayers to damages under 42 U.S.C. 1983, the provision of Federal law that provides a legal remedy for violations of federal civil rights. In addition, under 42 U.S.C. 1983, it is possible for a successful litigant to recover attorney's fees. Thus, I believe the liability exposure to the City is potentially massive - an exposure that the Council will have absolutely no control over.

It appears to me that many of the functions that are currently carried out by the City's Community Relations Commission (CRC) are duplicative of some of the functions of the HRC. As I understand the operation of the CRC, it investigates complaints of discrimination and attempts to mediate disputes on a voluntary, non-binding basis. As a result, the CRC operates without many of the constitutional due process concerns and therefore without the significant liability concerns that I have raised regarding the HRC. Providing a venue for the airing and mediation of discrimination complaints does not raise constitutional issues in and of itself. The constitutional issues arise when an entity (regardless of its name) exercises compulsory authority under color of law such as subpoenaing witnesses, administering oaths, taking testimony, and

awarding damages, reinstatement and/or other such legal remedies. Since the CRC does not engage in these functions, it is free from nearly all of the due process issues that face the HRC.

Finally, I believe it is worth noting that a city human relations commission is duplicative of several other state and federal government agencies. First, the state maintains a Human Relations Commission. The state currently pays for staffing of the Human Relations Commission, including the necessary legal support from the Attorney General's office (a cost which could be very significant in Rapid City if the current HRC is active.) The second agency is the Federal Equal Employment Opportunity Commission. The EEOC investigates complaints of employment-related discrimination and is cloaked with much authority to address discrimination in employment. Like the state Commission, the EEOC has the staffing and resources to investigate and pursue federal legal remedies. In addition to these two agencies, other Federal agencies also have authority to investigate complaints of race-based discrimination in housing, lending and other areas. Thus, there are many avenues for victims of discrimination to seek regress. It is my opinion that the City can amply aid victims of discrimination with the existing processes without exposing the City to the potential liability that attaches to violations of Federal constitutional rights.

CONCLUSION

It is my recommendation that the Council direct my office to redraft the current Human Relations Commission ordinance to more closely resemble the structure and mission of the Community Relations Commission. Such an ordinance will effectively balance the need to provide a local venue for complaints of discrimination to be addressed with the need to prevent unnecessary liability exposure to the City and its taxpayers.

JEG/map