

NEBRASKA HUMAN RIGHTS AGENCIES
December 1982

A monograph of the Nebraska Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This monograph will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the contents of this monograph should not be attributed to the Commission but only to the Nebraska Advisory Committee.

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--A monograph prepared by the Nebraska Advisory
Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this monograph are those of the Nebraska Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This monograph has been prepared by the State Advisory Committee for submission to the Commission and will be considered by the Commission in formulating its recommendations to the President and Congress.

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ACKNOWLEDGMENTS

This monograph was produced with the assistance of the Commission's Central States Regional Office. The investigation and monograph were the principal staff assignment of Etta Lou Wilkinson. The monograph was written by Malcolm Barnett. Legal sufficiency review was conducted by Elaine M. Esparza. Support services were provided by Jo Ann Daniels and Gloria O'Leary. The project was undertaken under the overall supervision of Melvin L. Jenkins, Esq., Director, Central States Regional Office.

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U.S. Commission on Civil Rights
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Dear Commissioners:

The Nebraska Advisory Committee submits this monograph of its review of State and local human rights agency activities in Nebraska as part of its responsibility to advise the Commission on civil rights issues within the State, and in follow-up to the Committee's 1975 report, Nebraska's Official Civil Rights Agencies. The Advisory Committee obtained information from the State civil rights enforcement agency, Nebraska Equal Opportunity Commission, and two local enforcement agencies, the Omaha Human Relations Department and the Lincoln Commission on Human Rights. In addition, information was obtained from the three State advocacy commissions, Commission on the Status of Women, Indian Commission and Mexican American Commission. The U.S. Equal Employment Opportunity Commission and U.S. Department of Housing and Urban Development provided data on the status of their deferral arrangements with Nebraska agencies. The agencies were given an opportunity to comment on the draft of this monograph and their comments and corrections have been incorporated into the final monograph.

The Advisory Committee noted that the Federal Government, as part of its FY 1983 budget analysis, has proposed "increased opportunities for States to participate in assuring compliance with nondiscrimination requirements," which conceivably might apply to local jurisdictional efforts as well. It also noted that two agencies, the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development already have formal deferral systems with the State and local agencies for civil rights enforcement efforts within their jurisdictions. The Committee found that State and local antidiscrimination laws in Nebraska are broadly similar to Federal statutes, with only limited discrepancies. The Advisory Committee recommends that the State and local agencies amend their laws to assure comparability with Federal legislation. While the State enforcement agency believes it could administer additional Federal laws, the local jurisdictions think they would need additional legal authority to accept further deferral responsibilities. Neither the State nor local agencies will accept additional deferrals of Federal civil rights laws without Federal financial assistance to pay the administrative costs of such responsibilities and allowance for additional staff training.

The Advisory Committee urges the Commission to undertake a comprehensive study of the existing status of State and local civil rights agencies to assess their current efforts and capacity to participate in an expanded deferral process. It should also consider development of a model civil rights

statute/ordinance that could be used by State and local legislatures to give their agencies the minimum legal basis for participating in Federal deferral efforts. Given the State and local agencies' concerns about financing and training, the Commission should assess the costs of an expanded deferral system and seek to determine whether Federal support of State and local efforts to replace current Federal enforcement would be cost effective or efficient.

The Advisory Committee found that the State and local agencies had implemented many of the recommendations made in the Committee's 1975 report. However, the Nebraska State legislature has yet to provide initiative authority to the Nebraska Equal Opportunity Commission. The Committee again urges the Governor and the Unicameral to amend the Nebraska Civil Rights Act to provide the Nebraska Equal Opportunity Commission with initiative power.

In addition, the Advisory Committee reiterates its previous recommendation that the Nebraska Equal Opportunity Commission urge the Governor and the Unicameral to amend the State's civil rights laws to provide uniform coverage.

The Advisory Committee noted the statutory limitations on the nonenforcement activities of the Indian and Mexican American Commissions, and suggests that the State consider whether their powers be expanded.

The Advisory Committee notes that only Lincoln and Omaha have active local civil rights agencies. In keeping with the effort to solve local problems at the lowest possible level of government, it urges other local governments to consider establishing such agencies.

We urge you to concur with our recommendations and to assist the Committee in follow-up activities.

Respectfully,

SHIRLEY M. MARSH, Chairperson
Nebraska Advisory Committee

1. INTRODUCTION

In April 1975 the Nebraska Advisory Committee to the U.S. Commission on Civil Rights published its review of Nebraska's official civil rights agencies.¹ In 1982 the Advisory Committee decided to ask what had happened in the seven years since its report had appeared and to assess the potential, capacity, and willingness of State and local agencies to assume the roles projected for them in the "new Federalism" under which the administration proposes increases in State and local administration of efforts that have been exclusively Federal. Specifically, in its proposed 1983 budget, the administration committed itself to "Increase opportunities for States to participate in assuring compliance with nondiscrimination requirements."² The Committee asked the Nebraska Equal Opportunity Commission, the Nebraska Commission on the Status of Women, the Nebraska Mexican American Commission, the Nebraska Indian Commission, the Omaha Human Relations Department and the Lincoln Commission on Human Rights to provide data on their current activities and what they had done to implement recommendations contained in the 1975 report.³ A similar letter was addressed to the Grand Island Commission on Human Rights, but a city official there told us the commission has been inactive for the past three years because there had been no complaints.⁴ The Advisory Committee did not interview the officials of most of the agencies nor did it interview others who might have provided alternate perspectives on their operations. Thus, the monograph is limited to the official perspectives of the three civil rights enforcement agencies and the three State advocacy commissions. The Advisory Committee did obtain information on the relationships of the Nebraska Equal Opportunity Commission, Omaha Human Relations Department and Lincoln Commission on Human Rights with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development.

The Nebraska Advisory Committee appreciates the effort which the agencies took to answer its questions. These agencies have been given an opportunity to comment on a preliminary draft of this monograph, and their comments have been fully incorporated into the final draft.

In 1980, of Nebraska's 1,570,006 inhabitants, 3.1 percent were black, 0.6 percent were American Indian/Eskimo or Aleut, 0.5 percent were Asian or Pacific Islander, 1.0 percent were of other groups (than those listed) and 1.8 percent were of Spanish origin (these are also counted in one of the racial groups). In that year of Omaha's 311,681 inhabitants, 12.1 percent were black, 0.6 percent were Indian and 2.3 percent were Hispanic. Of Lincoln's 171,932 inhabitants, 2.0 percent were black, 0.5 percent were Indian and 1.6 percent were Hispanic. Both Grand Island and North Platte had large percentages of Hispanics but few from other groups. Smaller towns in western Nebraska had even larger proportions of Hispanics or Indians in their populations.⁵ But none of these had human relations commissions with enforcement responsibilities.⁶ In the State and in the larger cities, there were small but significant increases in the proportion of persons from each minority group although the actual numbers did not increase significantly.

With a small but significant minority population, State and local civil rights agencies had considerable scope for activity. The Advisory Committee wondered whether the agencies they reviewed in 1975 had progressed as effective protectors of civil rights. In Chapter 2 the current laws governing the operations of the enforcement agencies are compared to current Federal antidiscrimination legislation. In Chapters 3 and 4 the activities of the State and local enforcement agencies are reviewed. In Chapter 5 the activities of the State's advocacy agencies are reviewed.

Notes

1. Nebraska Advisory Committee, Nebraska's Official Civil Rights Agencies, August 1975 (hereafter cited as Nebraska Advisory Committee report).
2. Office of Management and Budget, Executive Office of the President, The Budget of the United States Government, 1983, Special Analysis J, Civil Rights Activities (February 1982), p. 13.
3. Nebraska Advisory Committee report, pp. 91-95.
4. William Shreffler, Assistant City Attorney, City of Grand Island, telephone interview, July 12, 1982.
5. Bureau of the Census, 1980 Census of Population and Housing: Advance Reports (PHC 80-V-29) Tables 2 and 3.
6. Lawrence Myers, Executive Director, Nebraska Equal Opportunity Commission, telephone interview, Nov. 29, 1982.

2. THE ANTIDISCRIMINATION LAWS

The Advisory Committee compared the Lincoln and Omaha ordinances and the Nebraska statutes to Federal law. The results of the analysis appear in Table 2-1. With very few exceptions, State and local laws closely parallel the Federal statutes.

Federal law prohibits discrimination in public accommodations on the basis of race, color, religion or national origin.¹ The State law also protects on the basis of sex and ancestry.² The Lincoln ordinance adds age, marital status and receipt of public assistance to the State and Federal protected bases.³ The Omaha city code does not cover public accommodations.⁴ Both the Lincoln and the State prohibitions cover the same areas as Federal law. (See Table 2-1)

Federal law provides for enforcement of 42 U.S.C. sec. 2000a by private, civil legal action with intervention by the U.S. Attorney General under certain circumstances. If there is a local ordinance or State law which would apply, no civil action can be brought before the expiration of 30 days after notice has been given to the State or local authority which has responsibility for enforcing the statute or ordinance.⁵ The action may be brought for preventive relief including a temporary, permanent injunction or restraining order.⁶ The prevailing party may be awarded attorney's fees.⁷

The State statute allows the commission to issue cease and desist orders and order affirmative action such as "the extension of full equal and unsegregated accommodations."⁸ Willful violation or disregard of a Nebraska Equal Opportunity Commission order is punishable, upon court conviction, by a jail sentence of not more than 30 days and or a fine of not more than one hundred dollars. Appeal of a commission order is not, of course, a willful violation.⁹

The Lincoln city ordinance allows its commission to enforce the public accommodation provision (as it does all the antidiscrimination provisions) "by

appropriate measures," including affirmative action and cease and desist orders.¹⁰ The commission can also award damages "based on actual pecuniary loss and such damages as the commission may determine should be assessed."¹¹

Both the State law and the Lincoln Municipal Code contain an exemption in the public accommodation provisions for "Any public accommodation owned by or operated on behalf of a religious corporation, association or society which gives preference in the use of such place to members of the same faith as that of the administering body...."¹² The remainder of the State law and Lincoln city ordinance follow the Federal example.

The Federal Fair Housing Act prohibits discrimination in housing based on race, color, religion, sex or national origin.¹³ State law covers the same groups.¹⁴ The Omaha ordinance provides the same bases for protection as Federal law and adds age, marital status and disability. Ancestry is included in Omaha's definition of national origin.¹⁵ The Lincoln ordinance provides protection on all of the bases in the Federal and Omaha laws and also prohibits discrimination based on ancestry or receipt of public assistance.¹⁶

The State law and the ordinances of the two local governments follow the Federal example in detailing prohibited discriminatory housing practices.¹⁷ (See Table 2-1) Prohibited actions include refusal to rent or sell, discrimination in terms of sale, blockbusting and discrimination in advertising.

Federal law allows the victim of a discriminatory housing practice to file a complaint with the Secretary of Housing and Urban Development.¹⁸ As with the Federal public accommodations statute, the complaint will be deferred to the appropriate State or local agency having jurisdiction.¹⁹ If voluntary compliance is not achieved the complainant may file a civil action either in State or Federal court depending upon the circumstances. Possible relief could include permanent or temporary injunction, temporary restraining order and damages. Punitive damages cannot exceed \$1,000 and attorney's fees will

be awarded only if the prevailing party is not financially able to assume the fees.²⁰

The State fair housing statute provides for deferral to a local agency having jurisdiction, similar to the Federal procedure.²¹ In some circumstances the commission can seek injunctive relief from a State court.²² If voluntary compliance cannot be obtained, the commission can file a civil action seeking among other relief temporary or permanent injunctions, restraining orders, costs and reasonable attorney fees.²³ Under State law it is also possible for an aggrieved party in a housing case to file suit without exhausting the State administrative procedures. In such a case, the same relief would be available.²⁴

The Lincoln ordinance provides for relief in the general terms mentioned above for discrimination in public accommodations. However, if the complaint is based on an alleged failure to show housing the commission, after finding probable cause, can order the housing shown to the complainant.²⁵ The Omaha ordinance states that relief is not limited to but may include actual damages, and the sale, exchange, lease, rental, assignment or sublease of the property. In the case of blockbusting relief may include payment of the profits realized by the respondent to the aggrieved party.²⁶

Exemptions are provided under Federal law for transactions involving single family houses sold or rented by the owner without advertising or using an agent and for units in an owner-occupied dwelling containing no more than four units.²⁷ These exemptions are not provided under either State or local law. None have the exemption for a single family house sold or rented privately. However, the Omaha ordinance does exempt an owner-occupied dwelling when no more than four rooms are available for rent and the owner occupant "anticipates the necessity of regularly sharing a kitchen or bath with the lessee...."²⁸

The State statute does contain an exemption for a religious organization, association or society selling its non-commercial dwellings or land and giving preferences or limiting sales to persons of the same religion.²⁹ It also allows private clubs which provide lodging to limit rental or occupancy to its members or to give preference to its members.³⁰ These exemptions are also found in Federal law.³¹ The State exemption only applies to private clubs which offer lodging as an incident to their primary purpose and applies only to their non-commercial property.³² A person renting four sleeping rooms or less in his or her own home is also exempted by State law.³³ The Lincoln ordinance has the same exemptions as State law.³⁴ The Omaha ordinance contains an exemption, very similar to the State's, for religious organizations, allowing them to give preference to their members in real estate transactions.³⁵

The State statute, Lincoln and Omaha city ordinances also parallel the Federal law's prohibitions of discriminatory employment actions.³⁶ Among the discriminatory actions prohibited are the refusal or failure to hire, discrimination in the terms and conditions of employment, failure or refusal to refer for employment and discrimination in admission to training because the person is a member of a protected group.(See Table 2-1) Possible relief under all four laws includes back pay, hiring and reinstatement.(See Table 2-1) As stated before, Lincoln's ordinance speaks to remedies only in general terms but could be interpreted to include the above.³⁷

Like Federal law, the State statute exempts employers of 14 or fewer workers from its provisions.³⁸ Both Lincoln's and Omaha's laws cover employers with fewer workers; Omaha's covers employers with six or more employees and Lincoln's covers employers with four or more employees. Both exclude from that number certain relatives.³⁹

The categories of people protected under the prohibitions of discrimination in employment are very similar. Federal law prohibits

discrimination based on sex, race, color, religion, national origin, age (40-70) and handicap.⁴⁰ To this list State law adds marital status⁴¹ as do the Omaha⁴² and Lincoln ordinances.⁴³ The Lincoln municipal code also prohibits discrimination because the employee or applicant receives public assistance.⁴⁴

Protection offered to the handicapped (disabled) under Nebraska State law and the local ordinances would appear to exceed that provided by Federal law. Federal prohibitions of discrimination against the handicapped only pertain to employment under Federal programs, grants and contracts for Federal employment, although the definition of handicapped is broad.⁴⁵

The Nebraska State statute prohibiting discrimination against the "disabled" has a broad definition of disability including physical and mental impairments as determined by a doctor and does not limit coverage to State funded employment.⁴⁶ There is a provision, however, which allows employers to "deny privileges of employment when the nature and extent of a disability reasonably precludes the performance of the particular employment."⁴⁷

The Lincoln ordinance's definition of disability is the same as the State's.⁴⁸ The Omaha ordinance parallels the Federal definition.⁴⁹ Like the State statute, protection is not based on funding but applies to all aspects of employment and all employers covered by the other provisions.⁵⁰ The Lincoln ordinance contains the same exception as the State law regarding a disability which "reasonably precludes the performance of the particular employment."⁵¹ The Omaha ordinance contains a similar clause but limits its application to situations when "There is no reasonable accommodation that the employer can make with regard to the disability."⁵²

The complaint processing procedures of the State and local agencies are similar. All have commissions to receive, investigate, and conciliate complaints and may hold public hearings. The State's statute provides for a seven member Equal Opportunity Commission.⁵³ Lincoln's Commission on Human

Rights has nine members⁵⁴ and the Civil Rights Hearing Board in Omaha has 11 members.⁵⁵ The Omaha Human Relations Department has another board, the Human Relations Board, whose principal responsibility is to provide advice on human relations policy. It only acts on appeals when the director administratively dismisses a charge of discrimination.⁵⁶ The three enforcement agencies have subpoena power.⁵⁷ The State agency can seek temporary injunctions from the State district court in housing complaints⁵⁸ but the local agencies do not have that option.⁵⁹ The laws governing the three enforcement agencies require that, in most instances, they first attempt to conciliate complaints and may proceed to public hearing only if conciliation fails.⁶⁰ The State law does not provide for a public hearing when housing discrimination is alleged. If conciliation fails the State commission can initiate a civil action in district court.⁶¹

In broad terms, Federal, State and local laws provide comparable protections. The impact of administrative procedures on the enforcement of these protections is described in subsequent chapters.

Table 2-1

Comparison of Federal, State and Local Antidiscrimination Laws

Public Accommodations
42 U.S.C. sec. 2000a

	State	Omaha	Lincoln
Prohibits discrimination based on race, color, religion or national origin	X ¹	2	X ³
Covers any establishment which serves the public if its operations affect commerce, or if discrimination or segregation by it is supported by State action. Included are establishments which provide lodging to transient guests, facilities which are principally engaged in selling food for consumption on the premises, and any place of exhibition or entertainment	X		X
<u>Exceptions</u>			
1. Owner-occupied buildings with less than five rooms for rent or hire	X		X
2. Private clubs in fact not open to the public, except to the extent that the facilities of such establishments are made available to the customers or patrons of a covered public accommodation	X ⁴		X ⁵
<u>Prohibited Actions</u>			
1. Discrimination in provision of services, goods, facilities, privileges, advantages or accommodations	X		X
2. Segregation in the provision of services, goods, facilities, privileges, advantages or accommodations	X		X
3. Coercion or intimidation to force a person to violate the law	X		X

Note

42 U.S.C. sec. 2000a-3 provides for enforcement of this law by private civil legal action with intervention by the Attorney General under certain circumstances. If there is a local ordinance or State law which would apply, no civil action can be brought before the expiration of 30 days after notice has been given to the State or local authority which has responsibility for enforcing the statute or ordinance.

Footnotes

1. State law also protects on the bases of sex and ancestry. (Neb. Rev. Stat. sec. 20-132 (1974))
2. The Omaha city ordinances do not cover public accommodations. (Omaha, Neb., Code art. III, secs. 13-81 to 13-116 (1979))
3. The Lincoln ordinance protects on the bases of sex, ancestry, age, marital status and receipt of public assistance. (Lincoln, Neb., Municipal Code ch. 11.01, sec. 11.01.020 (1980))

4. State law provides an exemption for "Any public accommodation owned by or operated on behalf of a religious corporation, association, or society which gives preference in the use of such place to members of the same faith as that of the administering body."(Neb. Rev.Stat. sec. 20-137 (1974))

5. The Lincoln ordinance contains the same exemption for religious corporations giving preference as does the State.(Lincoln, Neb., Municipal Code ch. 11.04, sec. 11.04.060 (1980))

Fair Housing

42 U.S.C. sec. 3601 et.seq. and 24 C.F.R. 115.3 (1981)

	State	Omaha	Lincoln
Prohibits discrimination based on race, color, religion, sex or national origin	X	X ¹	X ²
Covers all housing except 1) single family houses sold or rented by the owner without advertising or using an agent, 2) units in owner-occupied dwellings containing living quarters for no more than four families	X ³	X ⁴	X ⁵
<u>Prohibited Actions</u>			
1. Refusal to sell or rent	X	X	X
2. Refusal to negotiate for a sale or rental	X	X	X
3. Making a dwelling unavailable	X	X	X
4. Discrimination in terms, conditions or privileges of sale or rental or in the provisions of services or facilities	X	X	X
5. Advertising in a discriminatory manner	X	X	X
6. Falsely representing that a dwelling is not available for inspection, sale or rental	X	X	X
7. Blockbusting	X	X	X
8. Discrimination in financing	X	X	X
9. Denying a person access to or membership or participation in multiple listing services, real estate brokers' organizations or other services	X	X	X
<u>Provides Administrative Enforcement Agency with Power to:</u>			
1. Receive and process complaints	X	X	X
2. Investigate allegations of discrimination	X	X	X
3. Conciliate complaint matters	X	X	X
4. Seek judicial enforcement and protection of rights under the law including			
a) temporary injunction	X	X ⁶	
b) subpoena	X ⁷	X	X

Footnotes

1. The Omaha ordinance protects on the bases of age, ancestry, marital status and disability, in addition to the bases covered by Federal law.(Omaha, Neb., Code art. III, secs. 13-105, 13-82(k) (1979))

2. The Lincoln ordinance protects on the bases of ancestry, disability, marital status and receipt of public assistance in addition to the bases covered in Federal law.(Lincoln, Neb., Municipal Code ch. 11.06, sec. 11.06.030 (1980))

3. State law does not contain the same exemptions as Federal law.(Neb. Rev.Stat. sec. 20-106 (1979)) It does contain an exemption for religious organizations, associations or societies selling their non-commercial dwellings/land giving preferences or limiting sales to persons of the same religion (Ibid., sec. 20-110(11)) It also allows private clubs which provide lodging to limit rental or occupancy or give preference to their members. The exemption only applies to private clubs which offer lodging as an incident to

their primary purpose and applies only to their non-commercial property.(Ibid., sec. 20-110(1)) A person renting four sleeping rooms or less in his or her own home is also exempted.(Ibid., sec. 20-110(2))

4. The Omaha ordinance exempts owner-occupied dwellings when no more than four rooms are available for rent and the owner occupant "anticipates the necessity of regularly sharing a kitchen or bath with the lessee..."(Omaha, Neb., Code art. III, sec. 13-109(a) (1979)) It also exempts a religious organization giving preference to members of the same religion in a real estate transaction if the preference is reasonably based on "the promotion of the religious principles for which the religious organization is established or maintained."(Ibid., sec. 13-109(b))

5. The Lincoln ordinance does not contain these two exemptions.(Lincoln, Neb., Municipal Code, ch. 11.01, sec. 11.01.010(f) (1980)) It does contain the same exemptions as State law.(Ibid., ch. 11.06, sec. 11.06.060)

6. The State commission has the power to issue its own subpoenas.(Neb. Rev.Stat. sec. 20-114 (1979))

7. The Omaha ordinance allows the director of the Omaha Human Relations Department to seek injunctive relief from the district court.(Omaha, Neb., Code art. III, sec. 13-195 (1979))

Equal Employment Opportunity
42 U.S.C. sec. 2000e-2, 5

- Prohibits discrimination based on sex, race, color, religion, national origin, age ¹ and handicap ²	X ³	X ⁴	X ⁵
- Covers all employers (see exemptions), all persons, including government, governmental agencies, labor unions, employment agencies, labor organizations	X	X	X
<u>Prohibited Actions</u>			
1. Refusal or failure to hire because person is member of protected group	X	X	X
2. Discriminatory discharge	X	X	X
3. Discrimination in the terms and conditions of employment	X	X	X
4. Limit, segregate or classify in order to deprive any individual of equal opportunity	X	X	X
5. Fail or refuse to refer for employment	X	X	X
6. Deny, limit, segregate or classify members of applicants in labor organizations	X	X	X
- 7. Cause or attempt to cause an employer to discriminate against an individual in violation of the law	X	X	X
- 8. Discriminate in admission to, or employment in, any program established to provide apprenticeship or other training	X	X	X
<u>Exemptions</u>			
1. Bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise	X	X	X
2. Religious institutions' discrimination on the basis of religion if the function of the institution is directed toward the propagation of a particular religion	X ⁶	X	X
3. Bona fide seniority system or benefits program	X	X	X
4. Employers with 14 or fewer employees	14 or fewer	5 or fewer	3 or fewer
<u>Authority to:</u>			
1. Receive and process complaints	X	X	X
2. Investigate complaints	X	X	X
3. Conciliate complaint matters	X	X	X
4. Grant relief including but not limited to back pay, hiring, reinstatement	X	X	X ⁹
- 5. Seek judicial enforcement of and protection of rights under the law			
a) temporary injunction		X ¹⁰	
- b) subpoena	X ¹¹	X	X

Footnotes

1. The Federal law protects on the basis of age from 40 to 70.(29 U.S.C. sec. 631)

2. Federal prohibitions on discrimination against the handicapped only pertain to employment under Federal programs, grants and contracts for Federal employment.(29 U.S.C. sec. 794)

3. State law also protects on the basis of marital status.(Neb. Rev.Stat. sec. 48-1104 (1981))

4. Omaha also protects on the basis of marital status, ancestry.(Omaha, Neb., Code art. III, secs. 13-89, 13-82(k) (1979))

5. The Lincoln ordinance also protects on the basis of marital status, ancestry and receipt of public assistance.(Lincoln, Neb., Municipal Code ch. 11.01, sec. 11.01.020 (1980))

6. State law also provides that "it shall not be an unlawful employment practice for a school, college, university or other education institution or institution of learning to fire and employ employees of a particular religion if...[it] is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum...is directed toward the propagation of a particular religion."(Neb. Rev.Stat. sec. 48-1108(a) (1981)) The Lincoln ordinance contains the same exemption.(Lincoln, Neb., Municipal Code ch. 11.08, sec. 11.08.080 (1980))

7. The Omaha ordinance does not include in that number the employer's parents, spouse, children or domestic servants.(Omaha, Neb., Code art. III, sec. 13-88(c)(1) (1979))

8. The Lincoln ordinance excludes from coverage "The employment of any individual by their parent, grandparents, spouse, child, or grandchild and domestic servants.(Lincoln, Neb., Municipal Code, ch. 11.08, sec. 11.080.030(b) and (c) (1980))

9. The Lincoln ordinance allows the Commission on Human Rights to "Award damages, based on actual pecuniary loss and such damages as the commission may determine should be assessed...."(Lincoln, Neb., Municipal Code ch. 11.02, sec. 11.02.040(11) (1980)) The commission can also "take such affirmative action...as...will effectuate the purposes of this title...."(Ibid., sec. 11.02.070(c))

10. The Omaha ordinance allows the director to seek injunctive relief from the district court.(Omaha, Neb., Code art. III, sec. 13-195 (1979))

11. The State commission has the power to issue subpoenas itself.(Neb. Rev.Stat. sec. 48-1117 (1981)) No mention is made of temporary injunctions. Parties have the right to appeal decisions in court.(Ibid., sec. 48-1120)

Notes

1. 42 U.S.C. sec. 2000(a).
2. Neb. Rev. Stat. sec. 20-132 (1974).
3. Lincoln, Neb., Municipal Code ch. 11.01, sec. 11.01.020 (1980).
4. Omaha, Neb., Code art. III, secs. 13-88 to 13-116 (1979).
5. 42 U.S.C. 2000(a)-3.
6. Ibid.
7. Ibid.
8. Neb. Rev. Stat. sec. 20-141 (1974).
9. Ibid., sec. 20-143.
10. Lincoln, Neb. Municipal Code ch. 11.02, sec. 11.02.040(b)(3) (1980).
11. Ibid., sec. 11.02.040(e)(11) (1980).
12. Neb. Rev. Stat. sec. 20-137 (1974) and Lincoln, Neb., Municipal Code ch. 11.04, sec. 11.04.060 (1980).
13. 42 U.S.C. sec. 3604.
14. Neb. Rev. Stat. sec. 20-107 to 20-109 (1979).
15. Omaha, Neb., Code art. III, sec. 13-105, 13-82(k) (1979).
16. Lincoln, Neb., Municipal Code ch. 11.06, sec. 11.06.030 (1980).
17. Neb. Rev. Stat. secs. 20-107 to 20-110 (1979), Lincoln, Neb., Municipal Code ch. 11.06, sec. 11.06.030, sec. 11.06.040 and sec. 11.06.050 (1980), and Omaha, Neb., Code art. III, sec. 13-105 to 13-107 (1979).
18. 42 U.S.C. 3610.
19. 42 U.S.C. 3610(c).
20. 42 U.S.C. 3612.
21. Neb. Rev. Stat. sec. 20-114(4) (1979).
22. Ibid., sec. 20-115 and sec. 20-116.
23. Ibid., sec. 20-118.
24. Ibid., sec. 20-119.
25. Lincoln, Neb., Municipal Code ch. 11.06, sec. 11.06.100 (1980).

26. Omaha, Neb., Code art. III, sec. 13-169(g), (b), (i) (1979).
27. 42 U.S.C. 3603(b). It should be noted that 42 U.S.C. sec. 1982 which prohibits racial discrimination in housing, does not recognize the exemption for private individual transactions. Thus a citizen can bring a private action based on race discrimination under sec. 1982. But national origin, religion or other protected groups are not covered. See Jones v. Alfred H. Mayers Co. 392 U.S. 409 (1969).
28. Omaha, Neb., Code art. III, sec. 13-109(a) (1979).
29. Neb. Rev. Stat. sec. 20-110(11) (1979).
30. Ibid., sec. 20-110(1).
31. 42 U.S.C. sec. 3607.
32. Neb. Rev. Stat. sec. 20-110(1) (1979).
33. Ibid., sec. 20-110(2).
34. Lincoln, Neb., Municipal Code ch. 11.06, sec. 11.06.060 (1980).
35. Compare Neb. Rev. Stat. sec. 20-110(11) (1979) with Omaha, Neb., Code art. III, sec. 13-109(b) (1979).
36. Neb. Rev. Stat. secs. 48-1104 to sec. 48-1108 (1981), Lincoln, Neb., Municipal Code ch. 11.08, secs. 11.08.040 to 11.08.070 (1980) and Omaha, Neb., Code art. III, secs. 13-89 to 13-94 (1979).
37. See Lincoln, Neb., Municipal Code, ch. 11.02, sec. 11.02.040(b), (c)(11) (1980).
38. Neb. Rev. Stat. sec. 48-1102 (1981).
39. Lincoln, Neb., Municipal Code ch. 11.08, sec. 11.08.030(b) (1980) and Omaha, Neb., Code art. III, sec. 13-88(c)(1) (1979).
40. 42 U.S.C. sec. 2000e-2, 29 U.S.C. sec. 631 and 29 U.S.C. sec. 794.
41. Neb. Rev. Stat. sec. 48-1104 (1981).
42. Omaha, Neb., Code art. III, sec. 13-89 (1979).
43. Lincoln, Neb., Municipal Code ch. 11.01, sec. 11.01.020 (1980).
44. Ibid.

45. 29 U.S.C. sec. 794. The Federal statute provides that, "the term 'handicapped individual' means...any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." 29 U.S.C. 706(b).

46. Neb. Rev. Stat. sec. 48-1102(8) (1981) and secs. 48-1104 to 48-1108 (1981). The State statute provides that "disability shall mean any physical or mental condition, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy or seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide, wheelchair, or other remedial appliance or device and shall also mean the physical or mental condition of a person which constitutes a substantial handicap, as determined by a physician, but is unrelated to such person's ability to engage in a particular occupation."

47. Ibid., sec. 48-1111.

48. Lincoln, Neb., Municipal Code ch. 11.01, sec. 11.01.010(d) (1980).

49. Compare Omaha, Neb., Code art. III, sec. 13-82 (1979) with 29 U.S.C. 706(B).

50. Lincoln, Neb., Municipal Code, ch. 11.08, sec. 11.08.040 to 11.08.070 (1980) and Omaha, Neb., Code art. III, secs. 13-89 to 13-99 (1979).

51. Lincoln, Neb., Municipal Code ch. 11.08, sec. 11.08.100(b) (1980).

52. Omaha, Neb., Code art. III, sec. 13-95(a)(2) (1979).

53. Neb. Rev. Stat. sec. 48-1116 (1981).

54. Lincoln, Neb., Municipal Code ch. 11.02, sec. 11.02.030 (1980).

55. Omaha, Neb., Code art. III, sec. 13-124.

56. James Herbert, Deputy Director, Omaha Human Relations Department, telephone interview, Nov. 16, 1982; Omaha, Neb., Code art. IV, sec. 4.04 (n.d.); Ruth Jackson, Director, Omaha Human Relations Department, letter to staff, Dec. 2, 1982.

57. Neb. Rev. Stat. sec. 48-1117 (1981), sec. 20-114(6) (1979), sec. 20-139(c) (1974), Lincoln, Neb., Municipal Code art. III, sec. 13-128 and 13-161 (1979).

58. Neb. Rev. Stat. sec. 20-115 (1979).

59. Lincoln, Neb., Municipal Code ch. 11.02, sec. 11.02.040 (1980) and Omaha, Neb., Code art. III, sec. 13-128, sec. 13-195 (1979). The Omaha ordinance does allow the director of the department to seek injunctions.

60. Neb. Rev. Stat. sec. 48-1119(1) (1981) and sec. 20-141 (1974), Lincoln, Neb., Municipal Code, ch. 11.02, sec. 11.02.070 (1980) and Omaha, Neb., Code art. III, secs. 13-156 to 13-170, sec. 13-145 (1979).

61. Neb. Rev. Stat. sec. 20-117 (1979).

3. THE NEBRASKA EQUAL OPPORTUNITY COMMISSION

The Nebraska Equal Opportunity Commission (NEOC) had its origin in the desire of the Unicameral to ensure that civil rights disputes were settled in the State by Nebraskans rather than by the Federal bureaucracy. The agency was established by Legislative Bill 656, the Fair Employment Practice Act of 1965. In 1969 the jurisdiction and name of the commission took its final form as a consequence of the Nebraska Civil Rights Act.¹ Efforts since 1972 when age was added to its mandate to expand the commission's powers have been rejected by the Unicameral on three separate occasions. Two matters have been of particular concern to NEOC. First, the Commission does not now have the power to initiate investigations without a complaint from a charging party.² Other similar bodies, such as EEOC, do have the power to initiate investigations based on "commissioner charges." Secondly, in the State's Fair Employment Practices Act there is an "intent clause" that requires proof of deliberate intent to discriminate before there can be a finding against a respondent.³

The commission had a budget in FY 1974 of \$151,000 and a staff of 17; for FY 1982, it had a budget of \$881,775 and a staff of 34. In 1973 the commission received 368 complaints; in FY 1981, 833 complaints.⁴ In FY 1982 NEOC received 763 complaints; 733 were about employment, 24 about housing and six about public accommodations.⁵ The staff was balanced between whites and minorities, men and women in both 1975 and 1982.⁶ Of the total staff of 17, in 1975, there were nine males, eight females, five whites, nine blacks, one Mexican American, one Native American and one Asian American. In 1982 of 32 employees, there were 17 females and 15 males, 17 whites, 12 blacks and three Hispanics.⁷

Subsequent to the Advisory Committee's 1975 report, the International Association of Official Human Rights Agencies (IAOHRA) reviewed the activities of NEOC. IAOHRA stated that while the attorney general maintained friendly

relations with NEOC there was a significant time lag between NEOC's requests for legal opinion and a response. It complained that some requests for opinions remained outstanding for two and one-half years and others had been delivered three to six months after the request. IAOHRA commented that "the Commission's needs are given relatively low priority by the Assistant Attorney General assigned to NEOC...." It said that the attorney general's failure to assign counsel to represent complainants who have been found by NEOC to have been victimized but lack the funds for legal action while providing legal services in consumer-related matters violated public policy.⁸ The executive director reported that NEOC has been able to contract with a lawyer to obtain opinions as to whether the hearing examiners' opinions make sense but since the attorney general advises all State agencies, his agency does not feel it can have separate counsel, as recommended by the Advisory Committee in 1975.⁹

In its 1975 report, the Advisory Committee also noted that NEOC was hampered by a growing backlog of cases,¹⁰ a conciliatory attitude by commissioners and staff,¹¹ the absence of clear standards of operation¹² or sufficient training for commissioners and staff.¹³ The Committee was also concerned about the absence of an effective way for clients from outside the Omaha/Lincoln areas to communicate with NEOC.¹⁴ NEOC reported it had a backlog of 27 cases awaiting conciliation during the 1981-82 fiscal year. This represented a significant decrease from the 36 it had on file during 1979-80.¹⁵ In FY 1981-82 about two percent of its closures were from backlog cases (that is cases begun prior to Oct. 1, 1979).¹⁶ IAOHRA stated that in 1981 it found commissioners still were overly conciliatory.¹⁷ IAOHRA did find that the administrative problems cited in the 1975 Advisory Committee report had been remedied by the current director, Lawrence Myers.¹⁸ The executive director of NEOC stated that currently training of both staff and commissioners was extensive and provided a substantial list of recent internal and external training experiences.¹⁹ To remedy the

communication problem, NEOC established, in fall 1975, a field office in Scottsbluff to serve the large Hispanic and Indian populations of western Nebraska. It did not obtain a toll-free telephone line, also recommended by the Advisory Committee for NEOC and the advocacy agencies, because the legislature refused to fund it.²⁰

The Advisory Committee urged the State to encourage the establishment of more local human rights agencies. NEOC reported that although it drafted a model fair housing ordinance in cooperation with the State's department of economic development and provided copies to all local governments with more than 20,000 population, only Scottsbluff has implemented the idea.²¹

In 1975 the Advisory Committee recommended that NEOC seek to gain jurisdiction over employers with 10 or more employees. NEOC did not do so because in its experience the 15 or more limitation had not had any impact on its activity.²²

The Advisory Committee recommended that NEOC obtain authority from the legislature to educate the public on civil rights matters. But this has not been a problem. They do a little public education to the extent that it does not duplicate work by the advocacy agencies (Nebraska Indian Commission, Nebraska Mexican American Commission and the Nebraska Commission on the Status of Women).²³

In 1975 the Advisory Committee recommended that the various State laws be amended to provide uniformity of coverage, that is the housing law should be amended to cover sex, age, disability and marital status and the public accommodation law should include age and disability.²⁴ Sex was added to the housing statute in 1979.²⁵ Otherwise, coverage has not changed.²⁶ The Advisory Committee was also concerned over the "unevenness in NEOC's mandate." Under the equal pay and age discrimination in employment provisions, the State can provide legal representation. In some cases (employment and public accommodations) if conciliation fails the commission

can only go on to a public hearing. In other cases, if conciliation fails, the commission on behalf of the complainant or the complainant may go directly into court (housing, equal pay, age discrimination in employment). Time limitations also varied among the various statutes.²⁷ These differences still remain.²⁸ The executive director stated his agency has hesitated to seek yet further uniformity in the statutes for fear that the relatively strong provisions of the age discrimination and equal pay statutes would be weakened rather than the other statutes strengthened.²⁹

The Advisory Committee, in 1975, was concerned about the lack of formal delegation of control over NEOC staff to its executive director. This was remedied in the 1979 amendments to the law.³⁰ The Advisory Committee also expressed concern about the absence of an agency affirmative action plan (as it did about the absence of such plans for the advocacy agencies).³¹ This was remedied in the 1978-79 fiscal year.³²

The commission stated that its resources are sufficient to allow it to fulfill its legal responsibilities.³³ Commenting on State support for the agency, the commission asserted:

The Nebraska Legislature and the Governor, in the current economic situation, are funding the Commission at a level that is appropriate and is indicative of the State's commitment to equal rights for all citizens. The Commission, like all State agencies, is undergoing decreases and/or cutbacks in its funding proposals. However, it should be pointed out that the Nebraska Commission has received and continues to receive an adequate amount of resources from the Legislature with the assistance of the Governor's office. The Nebraska Commission, like other State agencies, will have to tighten its belt and develop new systems or procedures so that it can accomplish its mission as it does now but at lower cost. The Commission in the coming years expects to have a decrease in terms of actual dollars received due to the state of the economy and the Commission believes that...[it] must make the necessary and proper adjustments to its procedures in order not to cause an increase in taxes for the citizens of Nebraska.³⁴

The commission believes that the belt-tightening should not be construed as reflecting the level of support it received from past and present governors and legislators.³⁵ Indeed, it noted:

The Commission since 1975 has received excellent cooperation from the Legislature, former Governor Exon and Governor Charles Thone. The Commission continually received an increase in real dollars up to FY 1979-80. After that time, the Commission received increases in its budget but due to inflation and cut-backs imposed on all State agencies, the Commission has not maintained the pattern of real dollar increases. However, the Commission has not been asked to decrease its budget in dollars and/or percentage as have other State agencies. The Commission continues to receive opposition from some legislators and a few of the members of the Executive Cabinet. But...overall...the legislature and the Executive Branch...[are committed to] a strong equal employment opportunity program within the State of Nebraska. This strong support is documented by the fact that the legislature, with the cooperation and the assistance of the Governor, passed LB 500 which produced for the first time in the State of Nebraska an office for affirmative action for State employees.³⁶

The Nebraska Commission noted that it already had jurisdiction regarding age and general employment discrimination and believes that it could administer, given Federal approval, Title VI (nondiscrimination in federally-funded programs) matters. It pointed out that State prohibitions of discrimination against the handicapped exceed the Federal requirements.³⁷ But the commission stated that it would not assume deferral responsibilities unless reimbursed by the Federal Government for the two-three additional staff and additional training (about \$42,000) that would be required to operate an effective deferral system just for Title VI activities.³⁸

The Nebraska Commission already has a worksharing arrangement with the local human rights agencies in its largest cities, Lincoln and Omaha. Under this agreements, the local agencies dual file all charges but the State allows the local agencies to process the cases themselves. However, the State retains the authority to investigate and/or modify decisions of local agencies. To date, the State commission reported it had reinvestigated or done other follow-up on less than one percent of such dual filings. The State investigates charges originally filed with it, even though they might be from parties in areas served by the local agencies.³⁹

The State also has deferral agreements with the U.S. Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban

Development (HUD). Prior to 1974, the relationship between EEOC and NEOC was strained because EEOC had found that NEOC had unreasonably rejected some complaints.⁴⁰ Commenting on its current relationships with the two Federal agencies, the Nebraska Commission stated:

The Commission's deferral arrangement with EEOC and the Department of Housing and Urban Development, in its current state, is excellent. The Commission continually works with HUD and EEOC in areas where we can effectively strengthen and/or improve the current deferral relationship. HUD now contributes to the Commission's budget a small sum of money which the Commission believes is adequate, based upon the number of housing charges received initially by the Commission and/or deferred to the Commission by HUD. The Commission believes that through continual dialog and effective communication, any current problems that exist will be systematically removed.⁴¹

EEOC maintains performance data on the work of those agencies with which it has deferral arrangements. In FY 1981, 69 State and local agencies had arrangements under which EEOC reimbursed them for their work on Federal cases. They took an average of 179 days to process new cases. NEOC took 275.⁴² They obtained an average of \$845 for complainants of cases closed, Nebraska obtained \$1,150 in settlements for complainants. They averaged four percent administrative closures, Nebraska's rate was only three percent.⁴³ Nebraska's caseload inventory was about 6-10 months, a relatively good record by comparison to other agencies.⁴⁴ Its production per month of 20 cases was about at the mid-point of the 69 agencies.⁴⁵ In the 11 months from August 1, 1981-June 30, 1982 for which EEOC maintains records for its contracts with State agencies, NEOC had a settlement rate of 44 percent compared to a national settlement rate of 34 percent. Its acceptance rate of 98 percent was similar to the national rate.⁴⁶ Its average number of days for processing cases was, in October 1982, 139.⁴⁷ This was below the national average of 196 for the EEOC accounting period.⁴⁸ NEOC noted it referred to EEOC only cases where there was a conflict of interest or the charging party asked that EEOC process the case. NEOC stated that 15-20 such cases had been referred in each of the past two fiscal years.⁴⁹ HUD was generally satisfied with NEOC's performance.⁵⁰

NEOC noted that in addition to its formal deferral arrangements it frequently refers complainants to the Office of Federal Contract Compliance Programs. Because it does not docket complaints where it lacks jurisdiction, NEOC could not provide an estimate of the number of such complaints.⁵¹

While it would appear that NEOC has a viable operation, it appears unlikely that it would assume additional responsibilities without financial support and there is some question as to what would be needed to allow NEOC to process Title VI complaints. NEOC did not discuss whether the lack of initiative power might inhibit its implementation of a Federal deferral agreement.

Notes

1. Nebraska Advisory Committee report, pp. 8-11.
2. Lawrence Myers, Executive Director, Nebraska Equal Opportunity Commission and Barbara J. Coffey, Commission Chairperson, letter to staff, June 16, 1982 (hereafter cited as Myers letter).
3. Neb. Rev. Stat. sec. 48-1119 (1981), Duffy v. Physicians Mutual Insurance Co. 191 Neb. 233, 214 N.W.2d.471 (1974).
4. Myers letter; Nebraska Advisory Committee report, pp. 13, 14 and 22.
5. NEOC Case Data for Fiscal Year 1981-82, data on file at CSRO.
6. Nebraska Advisory Committee report, p. 13 and Myers letter.
7. Ibid.
8. International Association of Official Human Rights Agencies, Report on a Study of the Nebraska Equal Opportunity Commission (Washington, D.C.: IAOHRA, June 26, 1981), pp. 5-9.
9. Lawrence Myers, telephone interview, Oct. 5, 1982.
10. Nebraska Advisory Committee report, pp. 22-24.
11. Ibid., p. 30.
12. Ibid.
13. Ibid.
14. Ibid., p. 92.
15. NEOC, Case Data for Fiscal Year 1981-82, on file in CSRO.
16. Ibid.
17. IAOHRA, Report on a Study of the Nebraska Equal Opportunity Commission (June 26, 1981), p. 15.
18. Ibid.
19. Lawrence Myers, letters to staff, June 16, 1982, Nov. 30, 1982.
20. Nebraska Advisory Committee report, pp. 13, 31 and 92; Lawrence Myers, telephone interview, Dec. 2, 1982.
21. Nebraska Advisory Committee report, p. 92 and Myers letter.

22. Nebraska Advisory Committee report, pp. 92-93 and Myers letter.
23. Nebraska Advisory Committee report, p. 93; Lawrence Myers, telephone interview, Oct. 5, 1982.
24. Nebraska Advisory Committee report, p. 92.
25. Neb. Rev. Stat. sec. 20-107 to 20-109 (1979).
26. Ibid., and sec. 20-132 (1974).
27. Nebraska Advisory Committee report, p. 19.
28. See for example Neb. Rev. Stat. sec. 48-1222 to 1224 (1969), sec. 48-1007 (1977), sec. 20-141 (1974), and secs. 20-117, 20-119, 20-114(3) (1974).
29. Lawrence Myers, telephone interview, Oct. 5, 1982.
30. Nebraska Advisory Committee report, p. 92; Neb. Rev. Stat. sec. 48-1111 (1981).
31. Nebraska Advisory Committee report, p. 92.
32. Lawrence Myers, telephone interview, Oct. 5, 1982.
33. Myers letter.
34. Ibid., emphasis in the original.
35. Myers letter.
36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid.
40. Nebraska Advisory Committee report, pp. 25-26.
41. Myers letter.
42. NEOC had to pick up charges from the Omaha Human Relations Department when the Omaha ordinance was declared unconstitutional in the latter part of 1979. This added approximately 100 cases to NEOC's caseload in FY 1980-81. Lawrence Myers, Executive Director, NEOC, letter to staff, Nov. 30, 1982.
43. Administrative closure rates include charges closed for lack of jurisdiction or because the agency is unable to locate the complainant. John

Rayburn, Jr., Director, State and Local Division, Office of Field Services, EEOC, letter to staff, attachments, June 8, 1982.

44. Lawrence Myers, telephone interview, Dec. 3, 1982.

45. John Rayburn, Jr., Director, State and Local Division, Office of Field Services, EEOC, letter to staff, June 8, 1982.

46. John Rayburn, Jr., telephone interview, Dec. 3, 1982.

47. Lawrence Myers, letter to staff, Dec. 1, 1982.

48. John Rayburn, Jr., telephone interview, Dec. 3, 1982.

49. Myers letter.

50. Troilus C. Warren, Director, Office of Regional Fair Housing and Equal Opportunity, HUD, letter to staff, Sept. 29, 1982.

51. Myers letter.

4. THE OMAHA AND LINCOLN HUMAN RIGHTS AGENCIES

The present review of local human rights agencies is limited to Omaha and Lincoln. In 1975 the Advisory Committee reviewed the activities of the Grand Island Commission on Human Rights but currently it is inactive. To the best of our knowledge, there are no other functioning local human rights commissions in the State with enforcement powers. The primary purpose of both the Lincoln and Omaha agencies is to enforce the local antidiscrimination laws by determining the justification of complaints and ordering remedies. The Omaha agency also serves as a local enforcement agency for both Federal fair housing and employment complaints and the Lincoln agency serves as a local enforcement agency for Federal fair housing. In addition, the Omaha Human Relations Department is involved in community relations, discrimination prevention and contract compliance activities.

The Omaha agency was established in 1956 and became a city department in 1966. Currently the department acts as staff to two boards, the Human Relations Board which is advisory to the Mayor and the City Council, and the Civil Rights Hearing Board which enforces the city's antidiscrimination ordinances.¹ In its 1975 report, the Advisory Committee noted that the then chairman of the Human Relations Board and an ex-Board Chairman saw a need for a "finer delineation of board functions."² Under a revision of the city's ordinances in 1979, the functions of the Human Relations Board were clearly defined. In addition to its role of reviewing requests for reconsideration by a charging party following an administrative dismissal of a charge by the Human Relations Department, the Human Relations Board has representation on the Civil Rights Hearing Board. The Human Relations Board's increased involvement in the activities of the Department has contributed to improved working relationships between the Human Relations Board and the Department. Now staff support to the Board is considered sufficient.³

The Lincoln Commission was established in 1952 but had to be reestablished in 1958. It took its present form in 1966.⁴

In February 1975 the Omaha Human Relations Department (OHRD) had a staff of 17 and a budget of \$180,674 for 13 city-funded positions and an additional four positions funded by CETA.⁵ In 1982 it had a staff of 19 and a budget of \$414,345.⁶ In March 1975 the Lincoln Commission on Human Rights had a staff of five and a budget of \$55,378.⁷ In 1982, Lincoln's Commission had a staff of eight and a budget of \$84,961.⁸

In 1974, the Lincoln Commission received 26 complaints (it had received 93 in 1973);⁹ in 1981, it received 91 formal complaints of discrimination; 68 were about employment, 17 were housing and six were public accommodations. The commission reported it docketed 74 other complaints which did not result in formally filed charges but which did require staff time and direct assistance.¹⁰ The Omaha human relations department received 247 complaints in FY 1973 (it received 236 in 1972);¹¹ in 1981 it received 215 charges of discrimination and 800 other requests for assistance. Of these 215, 190 were complaints of employment discrimination and 25 were about housing.¹² Both agencies received somewhat fewer complaints in 1981 than they received at the highest point reported by this Advisory Committee in its 1975 report, and cited reluctance to file a complaint as one reason why complaints are not a reliable measure of discrimination. The director of the Omaha Relations Department noted the disparity in utilization of minorities by Omaha businesses and the high unemployment rate for minorities compared to the low complaint rate as further indication that minorities, at least, do not know they are being discriminated against and not filing complaints because they do not think it will do any good.¹³

Both agencies agreed they had sufficient staff to carry out their fundamental tasks, but Omaha also thought it could do its job better with additional staff--an additional professional for the contract compliance

program, two additional professionals for the enforcement program, one professional and one clerical for the community relations program.¹⁴

The municipal commissions both have worksharing arrangements with the State enforcement agency. Under Omaha's arrangement, it processes all complaints of housing discrimination originating in Omaha. Omaha also has contracts with HUD--to process Federal complaints of discrimination in housing under Title VIII--and EEOC--to process complaints alleging discrimination under Title VII.¹⁵ Omaha contracted to process 100 complaints of employment discrimination in FY 1981 and did so. It processed about eight cases per month; each case took approximately 210 days to process and resulted in average benefits to claimants of \$808. These cases were processed somewhat more slowly and produced somewhat lower average benefits for claimants than the average for the 69 State and local agencies around the nation that had similar contracts with EEOC.¹⁶ In the 11 months, Aug. 1, 1981-June 30, 1982, which EEOC uses as an accounting year for its contracts with State and local governments, Omaha had a settlement rate of 26 percent compared to a national average of 34 percent. Its average processing time, in days, was 218 compared to a national rate of 196. It had an acceptance rate of 100 percent, compared to a national rate of 98 percent. Omaha is a "certified agency" which means that EEOC does not review all of its final decisions but will do so when requested by either party to a particular complaint.¹⁷ The city of Lincoln's Commission on Human Rights is a designated "706" agency by EEOC meaning its ordinance on employment discrimination is substantially equivalent to the Federal law. The commission's goal is to enter into a worksharing agreement with EEOC.¹⁸ The commission does ensure that all complaints to it are dual-filed with the Nebraska Commission, EEOC or HUD, as appropriate.¹⁹ The Lincoln Commission has been designated a Title VIII substantially equivalent agency, and has entered into a memorandum of understanding with HUD to provide for cooperation and coordination in handling housing discrimination

complaints under Title VIII.²⁰ Commenting on its relationship with both Lincoln and Omaha, HUD regional office stated that while there were problems, they were being resolved and that it was generally satisfied with the work of the local agencies.²¹

The Lincoln and Omaha agencies varied in their relations with their respective local legislatures and city administrations. Omaha pointed to the constant increase in funding and staff allocated to its agency and the refusal of the Mayor and Council to abolish the human relations department by transferring its activities to other agencies as recommended by a private business "economy" task force in 1980. In addition, despite a general personnel freeze in city government, the agency had been authorized to fill vacancies.²² Lincoln particularly noted the support it had received from its current mayor, but noted that with her retirement the Commission's future could be in doubt; that it has already experienced budget reductions and expected these to continue, in line with a general reduction in municipal expenditure. The Lincoln Commission did not anticipate it would have to cut any staff positions.²³ Any "hindrances" to the Commission were described as minor, e.g. a city council person's (or persons') attempts to lessen local protection, differences with counsel on legal interpretation.²⁴

Both agencies thought they could assume responsibility for enforcing Title VII, Title VIII, Sec. 504 (rights of the handicapped) and the Age Discrimination Act.²⁵ But they had some doubts about administering the Federal prohibition, under Title VI of the 1964 Civil Rights Act, of discrimination in federally-funded programs, regardless of the nature of the program. The director of the Omaha Human Relations Department doubted it had authority to handle a complaint regarding discrimination, other than employment or housing, in a federally-funded program.²⁶ The chief assistant city attorney of Lincoln thought its agency could process complaints regarding federally-funded programs only to the extent they involved employment, housing

or public accommodation. In other respects, he stated that the city's ordinances were comparable to Federal law but noted that Lincoln had not followed Federal practice or interpretations and thus there might be some disparities in administration.²⁷ Both Omaha and Lincoln apparently would need legislative action to assume complete responsibility for Federal antidiscrimination enforcement activities.²⁸

The Omaha director does not believe the mayor and city council will consider legislative action to assume Title VI-like jurisdiction over federally-funded programs unless individuals/organizations show that Title VI rights are being denied; and either city or Federal funding is available for this additional responsibility. But it would accept deferral of cases from NEOC on matters within its own jurisdiction. The Omaha department was unable to estimate the number of staff or added resources it might need because it did not know how many federally-funded programs there were in Omaha or how many complaints they currently generate.²⁹ The Lincoln Commission thought that to assume the added responsibility it would need added funds for a full or part-time independent legal counsel and an additional investigator. It would need to expand its jurisdiction by ordinance. Whether it would do so would depend on the funding arrangements and the terms of funding. The Lincoln Commission was concerned about paperwork or time restrictions that might render an additional workload excessive even with Federal funding. While the local commission had no similar problem with deferrals from NEOC, it was concerned that it be reimbursed and be allowed to apply its own broader statute rather than the State law in processing State cases.³⁰ In short, both believed they would need legislative authorization and would seek it only if the terms for deferral were favorable.

Neither Lincoln nor Omaha thought training would be a problem--although both agreed that some would be necessary. Omaha stated it would rely primarily on its internal training procedures, although it would make use of

Federal funds if they were available.³¹ Lincoln thought it would need help to train staff in statistical methods but it thought either NEOC or a Federal agency could provide staff to do this.³² Omaha has provided extensive training to its staff while Lincoln has relied on ad hoc activities. Both thought their levels of training were adequate for current needs.³³

Notes

1. Nebraska Advisory Committee report, p. 73 and James Herbert, Deputy Director, Omaha Relations Department, telephone interview, Nov. 16, 1982.
2. Nebraska Advisory Committee report, p. 75.
3. Ruth F. Jackson, Director, Omaha Human Relations Department, telephone interview, Dec. 9, 1982; Omaha, Neb. Code art. III, sec. 13-50 (1966), sec. 13-148 (1979) and sec. 13-148 (1979).
4. Nebraska Advisory Committee report, p. 66.
5. Ibid., pp. 76-77; Ruth F. Jackson, Omaha Human Relations Department, letter to staff, Dec. 2, 1982 (hereafter cited as Omaha letter).
6. Ibid.
7. Nebraska Advisory Committee report, pp. 68-69.
8. Jerry Loos, Chairperson, Lincoln Commission on Human Rights, letter to staff, Sept. 22, 1982 (hereafter cited as Lincoln letter).
9. Nebraska Advisory Committee report, p. 71.
10. 1981 Annual Report, Lincoln Commission on Human Rights.
11. Nebraska Advisory Committee report, p. 80.
12. Omaha letter.
13. Omaha letter; Lincoln letter.
14. Ibid.
15. Ibid.
16. John E. Rayburn, Jr., letter to staff, attachments, June 8, 1982.
17. John E. Rayburn, Jr., telephone interview, Dec. 3, 1982.
18. Gerald Henderson, Executive Director, Lincoln Commission on Human Rights, letter to staff, Dec. 6, 1982.
19. Lincoln letter.
20. Gerald Henderson, Lincoln Commission on Human Rights, letter to staff, Dec. 6, 1982.
21. Troilus C. Warren, letter to staff, Sept. 29, 1982.

22. Omaha letter.
23. Gerald Henderson, telephone interview, Dec. 3, 1982.
24. Lincoln letter.
25. Omaha letter; Lincoln letter.
26. Omaha letter.
27. Lincoln letter.
28. Omaha letter; Lincoln letter.
29. Omaha letter.
30. Lincoln letter.
31. Omaha letter.
32. Lincoln letter.
33. Omaha letter; Lincoln letter.

5. THE ADVOCACY COMMISSIONS: MEXICAN AMERICAN COMMISSION, INDIAN COMMISSION AND COMMISSION ON THE STATUS OF WOMEN

During the 1970's the State established the Mexican American Commission, Indian Commission and Commission on the Status of Women. They were intended to serve as advocates of the causes of their respective client groups in dealings with the State and Federal Governments. The Indian and Mexican American commissions had the broader purpose of trying to improve communication and understanding between distinctive minority groups and the majority population. The Indian Commission had its origins in a governor's commission. It became a statutory body in May 1971 with the passage of LB 904. Then Governor Norbert Tiemann stated that it was his hope that the commission would enable the various tribes and the State to work together to solve problems.¹ The Mexican American Commission had similar origins. It was formed by executive order in 1971 and became a statutory body in 1972 as a result of the passage of LB 1081.² The Commission on the Status of Women became a statutory body in 1971, with the passage of LB 819. It had been a governor's advisory body from 1964, established as a State response to the Federal initiative in creating such bodies.³ The functions of the three agencies are listed in Table 5-1. They develop information on their respective constituencies and recommend remedial action. Sometimes their proposals for change involve the promotion of legislation.⁴

All three agencies started out without staff or with only one person staffs. In FY 1972, the Indian Commission had a budget of \$20,994.⁵ In FY 1973, the Mexican American Commission had a budget of \$29,682 and a staff of one.⁶ In FY 1973, the Commission on the Status of Women had a budget of \$4,648; only in 1974 did the commission get a budget enabling it to hire paid staff, a director and a clerk/stenographer; its FY 1975 budget was \$23,019.⁷ In FY 1982, the Indian Commission budget was \$169,019 and provided funds for a staff of six.⁸ The Mexican American Commission's FY

1982 budget was \$200,729, providing funding for eight staff persons.⁹ The Commission on the Status of Women had a staff of eight persons and a budget of \$182,888 in FY 1982.¹⁰ In short, over the years, the three advocacy commissions have added staff and resources to enable them to perform their tasks.

In the mid-1970's the bulk of the three commissions' activities were social service oriented, putting together program funding packages that would aid their constituents and be administered by ad hoc commission employees. Thus, the Indian Commission developed programs to provide legal assistance, medical-dental services, housing, education and economic development.¹¹

The Mexican American Commission focused on discrimination against Hispanics in a series of hearings, administered an Emergency Food and Medical Services Program for migrant and seasonal farmers and worked toward increasing the number of Mexican Americans employed by State government agencies and universities.¹²

The Commission on the Status of Women was involved in the State's ratification of ERA, supported a variety of legislative initiatives to equalize opportunity for women, and advocated creation of a variety of legal enforcement mechanisms on such issues as: sexual assault, domestic violence, credit and insurance discrimination, equitable division of property at the time of divorce, State government affirmative action, child support collection enforcement and a State equal education opportunities act (similar to the Federal Title IX).¹³ Among its activities in the 1970's were:

--Successful promotion of legislation establishing a Spouse Abuse Assistance Act now delivering comprehensive service in 23 Nebraska communities;

--Researched the needs of displaced homemakers and successful promotion of legislation establishing Displaced Homemaker Programs in five communities with toll-free phone service throughout the State;

--Expanded NCSW programs to offer an Employment Opportunities program and a Legal Rights Information program on a permanent basis;

--Researched laws that discriminate on the basis of sex and successfully promoted corrective legislation;

--Carried out a minority women's project creating job hunting materials, workshops and a skills bank.¹⁴

By 1982, the Indian Commission had abandoned most of its programmatic activity and instead focused on ensuring that the Indian communities' leaders were aware of legislation involving them and given an opportunity to participate in decisionmaking.¹⁵ Commenting on its current role, the staff of the Indian Commission stated:

I believe we do serve both the people who are identified in our name as well as all other citizens of Nebraska. We were not created to "protect" our constituents from every adverse thing that might affect them. Indeed, most of the problems our Indian constituents suffer, they suffer, not because they are Indian, but because they are poor. Being Indian exacerbates the causes of their being poor and is an additional barrier to improving their economic status. Our role is to provide them with information and tools with which to overcome the barriers including referral to agencies that do have enforcement power.¹⁶

The Mexican American Commission obtained an independent audit of its activities that revealed serious organizational problems.¹⁷ It responded to this evaluation by systematically eliminating cited problem areas, and in restructuring the commission to reflect its' primary functional areas:

Advocacy and Inter-agency Cooperation, Administration, Referral, Research and Information Dissemination. In addition, the commission has placed increased emphasis on research and information dissemination.¹⁸ The Commission on the Status of Women has focused increasingly on low-income and rural women, minority women, young women, displaced homemakers and women in crisis.¹⁹

Among the activities it carried out during 1982 were:

--An expanded Information and Referral Center in the Commission office for Nebraska women with:

36,487 publications distributed annually;
120 speeches given throughout the State;
2,700 telephone requests for assistance answered;
30 workshops and seminars sponsored.

--Establishment of a Child Support Collection Task Force, creating awareness of lack of collections and pressuring for priority attention to the issue by public officials.

--Establishment of a Pay Equity Task Force, exploring methods of implementing a Nebraska system.

--Travel throughout the State, organizing Commissions on the Status of Women and Women's Councils.

--Organization of Women's Legislative Forums throughout the State.

--Successful promotion of an educational equity law.

--Organization of an Operation Talent Bank/Job Fair project.²⁰

Agencies noted that their statutory functions had not changed since 1975 but that their activities had changed to meet the new times and problems.²¹

All three agencies recognized that their mandates were far more extensive than their capabilities. The Indian Commission attributed its limited activity to a ruling by the State attorney general that limited its activities to the problems of Indians generally and therefore would not permit such efforts as post-prison programs because a prison experience was not "common to all Nebraska Indians."²² However, it noted that the attorney general's office had offered to support legislation to eliminate this legal barrier. The commission has declined to seek such a change from the legislature.²³ Similarly, some Commissioners and staff wanted funding for all Indian projects to pass through the Commission rather than the responsible State agencies but there is not agreement among the Commissioners and it is opposed by the other agencies. Thus, this has not been pursued.²⁴

The Mexican American Commission considers lack of staff its main limit on activity.²⁵ The Commission cannot provide direct services as its statute is now interpreted.²⁶ The Government, Military and Veterans Affairs Committee of the Unicameral held hearings during October 1982 on two resolutions introduced by Senator William E. Nichol.²⁷ One provided that hearings be held by the Unicameral in Scotts Bluff County to allow Hispanic residents an opportunity to express their concerns about problems facing them and that the Unicameral consider the possibility of allowing the Mexican American Commission to provide direct services to remedy social problems (Legislative

Resolution 225). Another resolution asked that a study be made of participation by older Hispanics in service programs, that hearings be held on this subject in Lincoln, North Platte and Scottsbluff, and that service providers be urged to "recognize the need for greater knowledge of and participation in their programs by older Hispanics," that they provide bilingual information and assistance and that they make greater efforts to ensure full participation by Hispanics (Legislative Resolution 226). The Commission on the Status of Women said that it was fulfilling its mission but that there was always more that could be done, with added resources.²⁸

All three agencies said they had good working relations with the Unicameral, despite occasional legislative rebuffs.²⁹ The Indian Commission felt it was most effective in its impact on a wide range of social legislation that affected Indians. Legislation harmful to Indians was often either amended or not passed. While noting success in some funded programs, the commission reported little trouble with legislation that did not require funding.³⁰ The commission noted its efforts in accelerating State aid to education payments to release cash-flow problems for the public schools on the reservations, and obtaining exemptions from tax matches for alcohol and drug programs.³¹ The Commission on the Status of Women noted that it had obtained support from both elected and appointed officials on many of its projects. The commission particularly noted the support for its legislative proposals to eliminate discrimination and promote opportunities for women.³² The Mexican American Commission noted that there were some who opposed the activities of the agency but that generally the legislature had been supportive, increasing its budget by 100 percent during the period 1976-1980. However, it noted that "due to severe economic conditions of the nation" during the past two fiscal years the increases amounted to between 0-3 percent. It further noted that the legislature had rejected in 1982 a proposal to reduce the commission's budget by one-half and had not reduced the staffing level of eight positions.³³

In 1975 the Nebraska Advisory Committee to the U.S. Commission on Civil Rights made a variety of recommendations to the State and its advisory agencies for improvements in their operations. Foremost was the provision of adequate resources. By and large, the three advocacy commissions thought this had been done, although some specific items such as toll-free numbers had either been rejected by the Unicameral, or not requested by the agencies because they were not considered priority items in times of fiscal constraint.³² None of these agencies was given independent legal counsel since it is State policy that the attorney general represent all State agencies. All have implemented some additional training beyond that which was available in 1975.³⁵ The Commission on the Status of Women has an ongoing affirmative action program. While in 1974, the NCSW had only an affirmative action statement, it now has a full plan including a work force utilization analysis, goals and timetables and action items to remedy any deficiencies.³⁶ The Mexican American Commission proposes to implement one in FY 1983.³⁷ All have implemented the administrative changes proposed by the Advisory Committee where no expenditure was involved, although not always in the precise form recommended. The Indian Commission did not need to obtain authority to pay per diem for commissioners conducting commission business other than attending meetings, and such payments have been made (the statute does not limit payment of per diem to attending meetings). The Unicameral did give approval for an executive board and authority for it to grant contracts not to exceed \$2000 without approval of the whole commission. The commission meetings were set at quarterly rather than monthly. Although there is no specific legislation on the point, the commission has given control of staff to its director.³⁸ The Mexican American Commission reported it had established three committees, one to handle crisis situations, in response to the suggestion that it have an executive committee. It had hired a female professional, as recommended by the Advisory Committee. Two female

commissioners have been appointed to the commission where there had been one before.³⁹ The Nebraska Commission on the Status of Women did add two minorities, one black and one Hispanic to its commission. The commission expanded its activities to serve the interests of low-income women by including such projects as a Job Hunt Workbook and a Minority Women's Report in its activities as well as by supporting legislative initiatives to improve the lot of low-income women.⁴⁰ Perhaps most important, the membership of the advocacy commissions and their activities have generally broadened to meet the criticisms of the Advisory Committee that, in 1975, they were not fully representative of the State or the interests of their constituents. As noted above the Commission on the Status of Women, which had 31 members including one minority in 1975, had 30 members including two minorities in 1982.⁴¹ In 1975, the Mexican American Commission had nine male and one female members.⁴² In 1982 it had 10 Commissioners, two of whom were women, and one of whom was a white male.⁴³ In 1975, the 15 member Indian Commission, which by statute is composed entirely of Indians, had 10 men and five women.⁴⁴ In 1982, three were women, nine were men and three commissioners had yet to be appointed.⁴⁵

These agencies have never had the capacity to administer civil rights laws. They are reviewed in this monograph because they were reviewed in the Advisory Committee's 1975 report and because their advocacy roles relate to their constituencies' civil rights. There is no expectation that they would assume additional responsibilities that would make them potential deferral agents for the Federal Government.

Table 5-1

A. Mexican American Commission

The Mexican American Commission has been directed by the legislature to serve a multi-faceted role:

1. Gather and disseminate information and conduct hearings, conferences, and special studies on problems and programs concerning Mexican Americans;
2. Coordinate, assist, and cooperate with the efforts of State departments and agencies to serve the needs of Mexican Americans especially in the fields of education, employment, health, housing, welfare, and recreation;
3. Develop, coordinate, and assist other public and private organizations which serve Mexican Americans;
4. Propose new programs concerning Mexican Americans;
5. Evaluate existing programs and proposed legislation concerning Mexican Americans;
6. Stimulate public awareness of the problems of Mexican Americans by conducting a program of public education and encourage the Governor and the legislature to develop programs to deal with these problems; and
7. Conduct training programs for community leadership and service project staff. (Nebraska Advisory Committee report, p. 48)

B. Indian Commission

By statute, "the purpose of the Commission shall be to join representatives of all Indians in Nebraska to do all things which it may determine to enhance the Indian cause of Indian rights and to develop solutions to problems common to all Nebraska Indians." The commission may:

1. Promote State and Federal legislation beneficial to the Indian community in Nebraska.
2. Coordinate existing programs relating to the Indian community in such areas as housing, education, welfare, medical and dental care, employment, economic development, law and order, and related problems;
3. Work with other State and Federal Government agencies and Federal and State elected officials in the development of new programs in areas mentioned under subdivision (2) of this section;
4. Keep the Governor's office apprised of the situation in the Indian community;
5. Provide the public with information and education relevant to Indian affairs in the State of Nebraska; and
6. Develop programs to encourage the total involvement of Indian people in activities for the common benefit of the Indian community. (Nebraska Advisory Committee report, p. 38.)

C. Nebraska Commission on the Status of Women

By law, the "purpose of the commission shall be to emphasize studying the changing and developing roles of women in American society including:

1. Recognition of socioeconomic factors that influence the status of women;
2. Development of individual potential;
3. Encouragement of women to utilize their capabilities and assume leadership roles;
4. Coordination of efforts of numerous women's organizations interested in the welfare of women;
5. Identification and recognition of contributions made by Nebraska women to the community, State, and Nation;
6. Implementation of the foregoing subdivision where improved working conditions, financial security, and legal status of both sexes are involved; and
7. Promotion of legislation to improve any situation in which implementation of [the above] indicates a need for change."(Nebraska Advisory Committee report, pp. 54-55)

Notes

1. Nebraska Advisory Committee report, pp. 33-34.
2. Ibid., pp. 44-45.
3. Ibid., p. 54; Jean O'Hara, Executive Director, Nebraska Commission on the Status of Women, letter to staff, Dec. 3, 1982.
4. Nebraska Advisory Committee report, pp. 38, 48 and 55; Jean O'Hara, letter to Chairperson, Nebraska Advisory Committee, June 28, 1982 (hereafter referred to as NCSW letter).
5. Nebraska Advisory Committee report, p. 37.
6. Ibid., pp. 46-47.
7. Ibid., pp. 55-58.
8. Harlene Holz, Assistant Director, Nebraska Indian Commission, letter to staff, July 16, 1982 (hereafter referred to as NIC letter).
9. Rudy Peralez, Executive Director and I.C. Plaza, Chairman, Mexican American Commission, letter to Chairperson, Nebraska Advisory Committee, June 29, 1982 (hereafter referred to as NMAC letter).
10. Jill Staberg, Accounting Clerk Senior, Nebraska Commission on the Status of Women, telephone interview, Nov. 2, 1982.
11. Nebraska Advisory Committee report, pp. 33-43.
12. Nebraska Advisory Committee report, pp. 52-53.
13. Nebraska Advisory Committee report, p. 59; Jean O'Hara, letter to staff, Dec. 3, 1982.
14. Ibid.
15. NIC letter.
16. Harlene Holz, Nebraska Indian Commission staff, memo to staff of CSRO, Dec. 2, 1982.
17. NMAC letter.
18. Gloria Reifenrath, Assistant Director, Mexican American Commission, letter to staff, Dec. 2, 1982.
19. NCSW letter.

20. Also the Commission sponsors a Talent Bank from which it makes recommendations to the Governor of qualified women to serve as volunteers on boards and commissions in State government; Jean O'Hara, Executive Director, Nebraska Commission on the Status of Women, letter to staff, Dec. 3, 1982.
21. NIC, NMAC and NCSW letters.
22. NIC letter.
23. Harlene Holz, memo to staff of CSRO, Dec. 2, 1982.
24. NIC letter and Ibid.
25. NMAC letter.
26. Ibid.
27. Omaha World-Herald, Oct. 10, 1982 and Omaha Star, Oct. 29, 1982.
28. NCSW letter.
29. NIC, NMAC and NCSW letters.
30. Harlene Holz, memo to staff, Dec. 2, 1982.
31. NIC letter.
32. NCSW letter.
33. NMAC letter.
34. Lawrence Myers, telephone interview, Oct. 5, 1982; NCSW letter; NMAC letter; and Harlene Holz, telephone interview, Dec. 3, 1982.
35. NIC, NMAC, NCSW letters.
36. Jean O'Hara, telephone interview, Dec. 6, 1982.
37. NMAC letter.
38. NIC letter.
39. NMAC letter.
40. NCSW letter.
41. Nebraska Advisory Committee report, p. 56; NCSW letter.
42. Nebraska Advisory Committee report, p. 46.
43. NMAC letter.
44. Harlene Holz, telephone interview, Dec. 3, 1982.
45. NIC letter.

CONCLUSION

Seven years ago the Nebraska Advisory Committee reviewed the civil rights laws of all then existing civil rights agencies in the State. At that time the Committee noted a number of deficiencies in their operations and suggested changes in law or procedure that would remedy those deficiencies. The Committee also urged that local civil rights enforcement agencies be established throughout the State. Some of the recommendations have been implemented. But some have not, either because the legislature failed to act or the agencies did not believe an issue to be a priority. Seven years ago, the Advisory Committee was convinced that its recommendations were reasonable and would not pose an unreasonable financial burden for State or local government. Today, the Advisory Committee continues to believe that implementation of its 1975 recommendations remain a reasonable goal and, although some would require additional expenditures, implementation costs would be recompensed by the benefits. The Committee's view is reiterated in the findings and recommendations contained in this monograph. In 1982, the Iowa Advisory Committee to the Commission completed a study similar to this one. Readers may wish to compare the conclusions of that report with the conclusions of this.

At the present time, the ordinances governing the Omaha and Lincoln human rights agencies' enforcement activities and the State laws governing the enforcement activities of the Nebraska Equal Opportunity Commission are fundamentally similar to the counterpart protections provided under Federal law. Despite these similarities and the existence of currently operating deferral agreements between these agencies and various Federal enforcement agencies, all three agencies question their legal ability to assume additional deferral authority. All agree they would not accept such authority and seek the necessary legislative authorizations unless the Federal Government reimbursed them for the costs of their activity (as it does now).

The Nebraska Equal Opportunity Commission's enforcement activities are governed by a series of State laws that have provided varied coverage for what are essentially similar discriminatory actions. Efforts to make procedures uniform have been delayed for fear that the Unicameral would authorize activity at the lowest level. The history of the agency (chronicled in our 1975 report) provides some encouragement for this view. Nonetheless, NEOC has shown that the Unicameral and the Governors have been supportive of its activities. The Committee believes that they can show their continued support for equal rights by making the laws more uniform while not weakening any and by providing the initiative power the commission needs if it is to be fully effective. The Committee makes other findings and recommendations for further actions that would ensure proper enforcement of the State commitment to end discrimination.

Within the limits permitted by the available data, the Advisory Committee believes the Omaha and Lincoln agencies have been effective in their enforcement of the various civil rights protections provided in their ordinances. The resources available appear to be adequate to the level of the agencies' activities as enforcers of civil rights laws (The Advisory Committee did not review their contract compliance efforts as a part of this study. A commentary on the Omaha compliance efforts is contained in our 1979 report on private sector affirmative action efforts.).

Other major cities around the State have not established human rights agencies. While it was not within the scope of this report to investigate the current need for such agencies, the Committee still maintains that other cities in the State should assess the climate of human relations in their communities and consider establishment of a mechanism for dealing with discrimination and possible intergroup tensions. In 1975, the Advisory Committee noted that the Nebraska Equal Opportunity Commission was established in large measure to keep administration of equal opportunity in Nebraska in

the hands of Nebraskans. The same logic should apply to local initiatives. It is surely desirable for local governments to try to solve local civil rights programs in their communities rather than rely on Federal or State agencies. This can be done only if local agencies are established and given sufficient resources to thrive. The Committee notes that the Grand Island human rights commission, whose activities it reviewed in 1975, has ceased to function for lack of complaints. There are always educational functions that such agencies can usefully perform even when there are no actual complaints to process. Thus, the test of need should not be whether there has been a recent incident or a number of complaints but whether discrimination and its eradication remain salient.

As the Federal Government seeks to transfer many of its existing responsibilities, including administration of antidiscrimination laws, back to State and local governments, the capacity of the deferral agencies must be an issue. All three enforcement agencies reviewed in this study raised some questions about their capacity to accept deferrals beyond those already negotiated. One pointed out very substantial procedural problems. All agreed they probably would need additional staff to process any additional complaints that new authority might generate. They also would need some training, although they were less sure this would be an impossible burden. If the Federal Government is committed to increased deferral of authority, these costs must be considered. There may be a saving to the extent that State and local government workers may be paid somewhat less than their Federal counterparts. But deferral might require additional coordinating activities at the national level involving relatively higher cost workers in Washington. Moreover, the number of local agencies would determine the level of cost--if agencies with smaller caseloads were accepted, staff and cost per case would rise. In short, any extensive deferral arrangements will require some hard thinking by the Federal Government to determine the appropriate level to which

the delegation should occur and the acceptable cost of that delegation. For example, the Federal Government might choose to delegate its authority solely to State agencies, allowing them in turn to make sub-delegations and appropriate financial arrangements with local agencies. This would minimize the costs of the Federal Government, since it would have to monitor the activities of only 50 units and could set national cost reimbursement estimates.

The Advisory Committee has not reviewed the actual performance of the Nebraska Equal Opportunity Commission or the Lincoln and Omaha agencies to determine the impact of their complaint rulings. A risk in delegation, from the national perspective, is that State (and local) agencies will vary in their views of equality and the national standards will be replaced by regional, State or local. Some of this could be controlled by careful rulemaking; some is inevitable and perhaps should be accepted as the reasonable cost of diversity.

In short, increased use of deferral arrangements covering a wider area of antidiscrimination law represents a leap into the unknown. Serious thought needs to be given to the implications of localizing enforcement and to the extent to which national standards can and should be maintained in the process.

FINDINGS AND RECOMMENDATIONS

The following findings and recommendations are submitted under the provisions of Sec. 703.2(e) of the Commission's regulations, empowering the Advisory Committee to "Initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."

The Advisory Committee presents the findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jurisdiction.

Finding 1: The Advisory Committee notes that, as part of the "new Federalism," the Federal Government is considering what regulatory responsibilities for civil rights compliance could be deferred to the State or local civil rights enforcement agencies. Two agencies, the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development, already have deferral arrangements for civil rights enforcement efforts within their jurisdictions. The Advisory Committee notes that the State and local antidiscrimination laws in Nebraska are broadly similar to Federal statutes. However, local jurisdictions believe they would need additional legal authority before undertaking to accept additional deferral responsibilities. The State and local agencies did not believe their governing legislatures would agree to any additional deferral arrangements unless Federal financial assistance was provided to pay the administrative costs of additional responsibilities and allow additional needed training.

Recommendation 1: The Advisory Committee urges the Commission to undertake a comprehensive study of the existing status of State and local civil rights agencies to assess their current efforts and capacity to participate in a significantly expanded deferral process. As part of that study, the Commission should consider framing a model civil rights statute/ordinance that could be used by State and local legislatures to give their agencies the

minimum legal basis for participating in Federal deferral efforts. In addition, given the State and local agencies' expressed concerns about financing and training, the Commission should assess the costs of a significantly expanded deferral system and seek to determine whether Federal support of State and local efforts to replace current Federal enforcement would be cost effective or efficient.

Finding 2: The Advisory Committee finds that there are some discrepancies between Federal antidiscrimination law and State or local law.

Recommendation 2: The Advisory Committee urges State and local authorities to amend their laws to assure comparability with Federal legislation, thus minimizing the need for Federal action to determine comparability.

Finding 3: The Advisory Committee notes that State and local agencies are not receiving formal complaints of discrimination in numbers proportionate to their assessment of the scope of discrimination in their jurisdictions.

Recommendation 3: The Advisory Committee urges the Nebraska Equal Opportunity Commission and the local agencies to discuss ways to ensure that persons who suffer discrimination do make use of the mechanisms available under State and local laws.

Finding 4: The Advisory Committee notes that although seven years has elapsed since its initial recommendation, the Nebraska State legislature has yet to provide initiative authority to the Nebraska Equal Opportunity Commission. The logic for doing so was fully stated in our 1975 report and remains valid.

Recommendation 4: The Advisory Committee urges the Governor and the Unicameral consider, once again, to amend the Nebraska Civil Rights Act to provide initiatory powers for the Nebraska Equal Opportunity Commission.

Finding 5: The Advisory Committee notes the inactivity of the Grand Island Human Rights Commission and the absence of human rights agencies in some of the larger communities in Nebraska that have substantial minority

populations. It notes the failure of local governments to adopt the State's model local fair housing ordinance.

Recommendation 5: The Advisory Committee urges the major communities in Nebraska that do not have local human rights ordinances and agencies consider establishing such bodies.

Finding 6: The Nebraska Equal Opportunity Commission has not sought uniformity of coverage of the State antidiscrimination laws because it believed the Unicameral might weaken the antidiscrimination provisions of some. The Committee hopes this is a false presumption.

Recommendation 6: The Advisory Committee urges the Governor and the Unicameral consider whether public policy would not best be served by a strong State antidiscrimination law and that such a law could be administered most effectively if it were uniform as to coverage and the procedures for enforcement made as effective as possible.

Finding 7: The Advisory Committee notes that the three State advocacy commissions have had adequate resources in the recent past to fulfill at least a substantial part of their missions. The Committee notes, however, that future State fiscal constraints may reduce the resources of the advocacy commissions below the minimum level needed for viability. Furthermore, the Indian Commission and Mexican American Commission face statutory limitations on their activities.

Recommendation 7: The Advisory Committee urges the State to continue to fund the advocacy commissions at levels sufficient to ensure at least the current levels of operation. Further the State should consider whether the powers of the Mexican American Commission and Indian Commission should be expanded. The former might be given the right to operate programs. The latter might be given the right to operate programs that benefit specific groups of Indians so long as those do not discriminate based on tribe or location in the State.