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GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 69-3 (R-47)

REQUESTED BY: THOMAS L. HALL, Advisor
Arizona Board of Regents

QUESTION: What steps should be taken by the Board of Regents to establish the facts bearing upon the question of discrimination in the performance of a contract to which they are a party?

ANSWER: See body of opinion.

The public policy of the State of Arizona regarding discrimination and its contracts is clearly set forth in A.R.S. §23-373, which reads as follows:

"§23-373. Public contracts

A. Contracts negotiated between public contractors and public employers shall contain the following contractual provision:

'In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees

Opinion No. 69-3 (R-47)

December 17, 1968

Page Two

and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.'

B. Any violation of such provision by a public contractor shall constitute a material breach of the contract."

The companion sections, 23-371, 372, 374 and 375, were repealed when the Legislature enacted Chapter 27, §4, Laws of 1965, and enacted the State Civil Rights Act of 1965, A.R.S. §41-1401, et seq.

The State Civil Rights Act provides for a Civil Rights Commission to administer the provisions of the Act and provides the machinery to investigate, determine and oppose discrimination in the categories of voting rights, public accommodations and employment. The fact that the companion provisions of A.R.S. §23-373 are now incorporated within this Act makes it clear to us that the Legislature intended the State Civil Rights Commission be the agency charged with the investigation and the determination of the fact of discrimination. This conclusion is reinforced by the broad enforcement and investigative powers granted the Commission under A.R.S. §§41-1481 and 1482.

It is our opinion that when reliable information is received by the Board of Regents relating to alleged discrimination, in the categories of voting rights, public accommodations or employment as covered by the Civil Rights Law, by individuals or firms with whom they have existing contracts, that such information should be furnished the State Civil Rights Commission

Opinion No. 69-3 (R-47)
December 17, 1968
Page Three

for their consideration and investigation. They have the power under A.R.S. §41-1481.E to determine discrimination as a fact question. If, after exhaustion of the procedural requirements of A.R.S. §41-1481, the Commission, upon a finding of discrimination, issues its cease and desist order, the fact of discrimination has been determined and upon receipt of a certified copy of the Commission's Order the Board of Regents should declare a material breach of the contract pursuant to A.R.S. §23-373. If the Commission does not find discrimination, then the issue is closed.

Respectfully submitted,

GARY K. NELSON
The Attorney General

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