

Buffalo Law Review

Volume 14
Number 1 *Toward Equal Opportunity in
Employment: The Role of State and Local
Government—Proceedings of the Conference in
Memory of Honorable Philip Halpern, April 24,
25, 1964*

Article 18

10-1-1964

Supplementary Activities for State Governments Seeking to Eliminate Discrimination

Frederick B. Routh
National Association of Inter-Group Relations Officials

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Administrative Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Frederick B. Routh, *Supplementary Activities for State Governments Seeking to Eliminate Discrimination*, 14 Buff. L. Rev. 148 (1964).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol14/iss1/18>

This Leading Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

SUPPLEMENTARY ACTIVITIES FOR STATE GOVERNMENTS SEEKING TO ELIMINATE DISCRIMINATION

FREDERICK B. ROUTH*

THERE is no adequate substitute for the administrative enforcement of legislation in state governmental activities aimed at the elimination, prevention, or lessening of discrimination. Most public administrators, who head state FEPCs, acknowledge the validity of the old saw "A dog with good teeth will have his bark heard." Law, with teeth—while no end in itself—is the necessary tool for those who would work at the task of ending discrimination. Persuasion and conciliation *are and should be* the first steps to be taken in dealing with a respondent. But a state agency which administers an *enforceable* statute is more persuasive and the respondents which come before it are more conciliatory than in those situations in which the agency lacks enforcement powers.

While it is true that there is no adequate substitute for enforcement powers, there are certain supplementary actions which a state government may undertake to strengthen and expand its role in combating discrimination. In certain cases where state legislatures have failed to enact enforceable—or, for that matter, any—legislation, the suggested activities which follow may serve as stop-gaps (not substitutes) until such time as effective statutes have been passed.

The Governor, as chief executive officer of the state, can play a determining role in setting state policy in the area of antidiscrimination as well as in other areas in which governors have historically exerted leadership. The Governors of New York and Michigan have led the way in promulgating a GOVERNOR'S CODE OF FAIR PRACTICES. Other state chief executives have followed suit. A Governor's Code of Fair Practices does several important things:

1. It formally declares the public policy of the state to be for equality of opportunity and against discrimination;
2. It invokes the wide range of state administrative power to carry out this public policy;
3. It calls for affirmative action more so than do the corrective activities of processing complaints;
4. It directs itself to internal and external governmental activities and functions;
5. It places responsibility for follow-through on each department and agency head;
6. It calls for regular reports, making possible evaluation of progress (or lack of it) in each department and agency.

* Executive Director, National Association of Inter-Group Relations Officials.

SUPPLEMENTARY ACTIVITIES

It is not enough for the Governor to quietly issue a Code of Fair Practices—he must make it known to the heads of all state departments and agencies and, through prominent posting in all state buildings, offices, and facilities, to all state employees and to the public at large. Governor John B. Swainson of Michigan called a special meeting of all state department and agency heads to announce and explain his Code, to stress that he “meant business,” and to ask each executive to study ways of furthering the purposes of the Code, under existing legislation. The success of this meeting and one subsequently held suggest the advisability of regular meetings between the Governor and the leaders of the executive department of government focused on civil rights.

In addition to the Governor’s Code of Fair Practices, which declares over-all state policy and sets over-all state practice, each department and agency of the executive branch may strengthen the state’s war on discrimination by promulgating a clear, definitive, written policy of equal employment opportunity. The state should put its own house in order as an equal opportunity employer.

State agencies and departments which contract with outside, private corporations for supplies, services, material, or work should negotiate contracts containing nondiscrimination clauses covering contractors and subcontractors; breach of such contractual provisions, it should be specified, will be regarded as a material breach of the contract.

State licensing authority may be utilized in carrying forth the public policy against discrimination. No one argues that it is unconstitutional, illegal, or even improper for state licensing agencies to set certain standards of safety, cleanliness, or usage; indeed, most licensing agencies have a list of rules with which applicants-for-license and licensees must comply. While guarding against arbitrary and capricious acts, licensing agencies may, in many cases, add an antidiscrimination article to the rules. When licensees then violate this rule the licensing agency should take such disciplinary action as may be provided in the statute or the administrative code for rules violation. A broad or liberal construction of the statutory authority of licensing agencies should reveal a goodly number of legal ways to utilize that authority in effectuating a state public policy of equal opportunity.

State governments, in the middle to latter part of the twentieth century, offer many services and facilities which were unheard of in earlier times. They are engaged, directly and indirectly, in such wide ranging activities as: higher and public education; health services; apprenticeship and on-the-job training; vocational guidance and counseling; employee recruitment, classification and referral; research, both pure and applied; agricultural experimentation; raising fish, fowl, and wildlife; exploring for natural resources; to name but a few. In many of these activities, government itself does not actually engage; rather, it makes grants to institutions, agencies, companies, and even individuals who specialize in such activities. The axiom that “Public policy follows the public

purchase" should be applied to all who receive, or seek to receive grants from state governments. As the Michigan Governor's Code of Fair Practices puts it, "All state agencies engaged in granting financial assistance shall deny it to any applicant and withdraw it from any recipient engaged in discriminatory practices, consistent with the statute under which they operate." Such a policy should not be limited to financial assistance but should equally apply to other forms of aid, assistance, or grants. The leasing of a research facility for a dollar-a-year, the free provision of seedlings, the free or reduced rate of providing testing facilities are also important "gratuities" received by many companies, unions, and institutions. Those who receive such benefits should be required to pursue a nondiscriminatory policy and practice.

The most important asset any state possesses is its human resources—its citizenry. Human resources, like natural resources, must be safeguarded. It is the proper role of state government to use its authority in further developing all its resources. The elimination of discrimination, the creation of equality of opportunity greatly enhance the worth of human resources. Obviously, then, it is proper for any state government to utilize all legal means at its disposal, to bend the efforts of every department and agency to the accomplishment of easing, ending, and preventing discrimination.