

**Title VI Activities of the
Tennessee Human Rights Commission**

January 2001

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

State Capitol
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John G. Morgan
Comptroller

January 31, 2001

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Steve Cohen, Chair
Senate Committee on State and Local Government
The Honorable Ulysses Jones, Chair
House Committee on State and Local Government
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Title VI activities of the Tennessee Human Rights Commission. This audit was conducted pursuant to House Joint Resolution 176, which requests "a performance evaluation of the various Title VI activities, programs and resources of the Tennessee human rights commission."

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/llw
01-033

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
**Title VI Activities of the
Tennessee Human Rights Commission**
January 2001

AUDIT OBJECTIVES

The objectives of the audit were to determine the authority and responsibility mandated to the commission regarding Title VI by statute and the extent to which the commission has fulfilled its statutory and legislative mandate; to determine the Title VI activities performed by the commission and the extent to which they fall within statutory and legislative boundaries; to determine the resources being used by the commission for Title VI activities; and to make recommendations that might result in more efficient and effective operation of the commission.

FINDING

The General Assembly needs to review the commission's authority and responsibilities in regard to federal Title VI and state statutes

The commission (THRC) has undertaken a number of tasks related to Title VI and *TCA*, Sections 4-21-904 and 905, including receiving complaints, reviewing implementation plans, providing technical assistance, and assisting private and public agencies in meeting their Title VI responsibilities. However, not all of these tasks are specified in state law.

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider amending Section 4-21-901, *Tennessee Code Annotated*, to require agencies to submit their annual Title VI compliance reports and implementation plan updates to the Human Rights Commission. The General Assembly may also wish to consider amending Section 4-21-901 or adding a new section setting forth specific responsibilities of the Human Rights Commission to

- review the annual reports and implementation plans,

- hold public hearings on each agency's plan to allow for legislative and public input,
- make recommendations to state agencies when plans are found deficient,
- follow up to ensure revised plans are submitted, and
- report annually to the General Assembly on the status of implementation plans and the status of complaints filed with the commission and state agencies.

"Audit Highlights" is a summary of the audit report. To obtain the complete audit report, which contains all findings, recommendations, and management comments, please contact

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Performance Audit
Title VI Activities of the Tennessee Human Rights Commission

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Performance Audit Title VI Activities of the Tennessee Human Rights Commission

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Title VI activities of the Tennessee Human Rights Commission (THRC) was conducted in response to House Joint Resolution 176, which requests “a performance evaluation of the various Title VI activities, programs and resources of the Tennessee human rights commission.” (See Appendix 1)

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to the commission regarding Title VI by statute and the extent to which the commission has fulfilled its statutory and legislative mandate;
2. to determine the Title VI activities performed by the commission and the extent to which they fall within statutory and legislative boundaries;
3. to determine the resources being used by the commission for Title VI activities; and
4. to recommend possible alternatives for legislative or administrative action that may result in more efficient and/or effective operation of the commission.

SCOPE AND METHODOLOGY OF THE AUDIT

The Title VI activities of the THRC were reviewed for fiscal year 1996 through fiscal year 2000. The audit was conducted in accordance with generally accepted government auditing standards and included

1. a review of applicable statutes and rules and regulations;
2. an examination of commission documents;
3. a review of prior performance audit and financial and compliance audit reports; and
4. interviews with commission staff.

STATUTORY RESPONSIBILITY

The Tennessee Human Rights Commission’s mission is to promote civil rights in Tennessee. The commission is charged to encourage, promote, and develop fair and equal

treatment of and opportunity for all Tennesseans regardless of race, color, creed, sex, or national origin.

Section 4-21-202, *Tennessee Code Annotated*, provides for the Human Rights Commission to promote the creation of local human rights commissions and enter into working cooperative agreements with them; receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging civil rights violations; furnish technical assistance on request to help organizations further their compliance; and cooperate with the federal Equal Employment Opportunity Commission in its enforcement of the Civil Rights Act of 1964 and with the U.S. Department of Housing and Urban Development in its enforcement of the Fair Housing Act of 1968.

The Tennessee Human Rights Act (THRA), *Tennessee Code Annotated*, Section 4-21-904, states, "It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964, or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving such funds, on the basis of race, color, or national origin."

Under Section 4-21-905, "Any person claiming to be aggrieved by a discriminatory practice under this part may file a complaint with the state agency receiving the funds within one hundred eighty days (180) of the occurrence of the alleged discriminatory act. An aggrieved person may also file a complaint with the human rights commission, as provided in § 4-21-302. Complaints filed with the human rights commission are subject to all the powers of the commission and will be subject to all of the procedures set out in part 3 of this chapter. Complaints filed with state agencies are subject to review by the human rights commission for applicability under Title VI of the Civil Rights Act of 1964."

COMMISSION COMPOSITION AND STAFF

The commission has 15 members appointed by the Governor, five from each grand division of the state. The members are to be appointed on a nonpartisan basis and be broadly representative of employees, proprietors, trade unions, religious groups, human rights groups, and the general public. Commissioners are appointed for six-year terms and may be reappointed. The commission meets bimonthly.

Section 4-21-202(3) gives the commission the authority to annually appoint an executive director and set his compensation, as well as to maintain offices in Shelby, Davidson, Knox, and Hamilton counties and other offices as necessary. The current executive director was first appointed in November 1997.

The 99th General Assembly passed the Tennessee Human Rights Act in 1995. In December 1995, a Title VI office was created within the THRC and a program director was chosen. On October 15, 1998, the Department of Finance and Administration notified all cabinet

officers and agency heads that the THRC was the lead coordinating state agency for the monitoring and enforcement of Title VI of the 1964 Civil Rights Act. In fiscal year 2000, the Title VI office was renamed the Federal Funds Division. According to the strategic plan drawn up in May 1996, the program called for four full-time employees (two investigators, an attorney, and a secretary) in addition to a program coordinator. No additional budgeted staff positions were created, and the program coordinator remained the sole staff person until the fall of 1998. At that time, the commission's executive director transferred staff from other areas of the commission to the Federal Funds Division. The program coordinator, however, is the only full-time Federal Funds staff, as the other three persons spend the majority, if not all, of their time on other commission matters.

REVENUES AND EXPENDITURES

The commission had total expenditures of \$1,699,400 for the year ended June 30, 2000. The budget for the fiscal year ending June 30, 2001, is \$1,673,400. In that budget, \$1,084,900 will be funded from state appropriations and \$433,900 will be federal revenue under agreements with the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. Some \$154,600 is expected from other revenue sources—state agencies charged for Federal Funds Division assistance.

When the Title VI program (now the Federal Funds Division) was first established in 1996, a flat rate was charged to all the state agencies receiving federal funds to cover the \$150,000 initial cost of establishing the program. Thirty-two of 37 of the agencies receiving federal funds paid \$4,054 for a total of \$129,761. This was 29.5% of the commission's fiscal year 1996 budget. However, in 1997, the Department of Finance and Administration informed the commission that flat-rate billing was against Office of Management and Budget standards. In order to bill for and enable state agencies to request federal reimbursement for Title VI activities, the Federal Funds Division would have to keep track of actual time spent and the specific activity and agency the work was for. However, it was eventually determined by the Department of Finance and Administration that the activities performed by the Federal Funds Division were not allowable for reimbursement under federal regulations. Since 1997, except for one payment of \$4,054 in fiscal year 1998 and \$3,165.56 in fiscal year 1999, the Federal Funds program has received no revenues. Also, the commission has not found a way to charge other entities for commission assistance. In fiscal year 1998, the program had total annual expenditures of \$115,242.90 (salaries of Title VI/Federal Funds staff and administrative support staff, their benefits, and operational expenditures); in fiscal year 1999, \$185,772.57; and in fiscal year 2000, \$226,161.85. Currently, there is no funding specifically earmarked in state appropriations or the commission's budget for Federal Funds Division operations.

FINDING AND RECOMMENDATIONS

The General Assembly needs to review the commission's authority and responsibilities in regard to federal Title VI and state statutes

Finding

The commission (THRC) has undertaken a number of tasks related to Title VI and the Tennessee Human Rights Act (THRA), *TCA*, Sections 4-21-904 and 905, including receiving complaints, reviewing implementation plans, providing technical assistance, and assisting private and public agencies in meeting their Title VI responsibilities. However, not all of these tasks are specified in state law. Based on a review of *Tennessee Code Annotated*, Sections 4-21-202, 302, 904, and 905, and the June 12, 2000, state Attorney General Opinion 00-107 (See Appendix 2), along with other documents, the commission must restrict its activities to those powers and procedures specified in part 3 of the THRA. The THRC has no authority to monitor, process, investigate, or provide technical assistance regarding a discrimination complaint filed under Title VI of the 1964 Civil Rights Act or against an entity receiving funds directly from the federal government and not via a state agency. Any investigation performed by the THRC must be done under *TCA*, 4-21-904 and 905, as specified in *TCA*, 4-21, Part 3. All other activities, such as public relations and technical assistance, must relate to Tennessee's statutes and not federal Title VI.

Federal and State Laws Regarding Title VI

Title VI of the 1964 Civil Rights Act declares, "No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

According to the state attorney general, the federal code

does not allow aggrieved persons to file administrative complaints, but the courts have concluded that Title VI creates a private right of action allowing aggrieved persons to file lawsuits directly in federal court. Federal authorities can monitor, investigate, and take agency enforcement initiatives, particularly under the Title VI federal regulations. . . . The federal government is charged with the responsibility of monitoring and investigating state agencies and private entities to compel compliance with Title VI under possible forfeiture of federal grants and similar sanctions. Title VI, and its regulations, put an affirmative duty on state agencies to make sure they do not discriminate on account of race, color, or national origin. Title VI does not require a state to set up 'compliance' agencies to monitor and investigate other state agencies. Title VI does not delegate to state agencies

[meaning the THRC] the authority to process and resolve administrative complaints against state agencies. Title VI contemplates that the federal government will enforce Title VI and that state agencies will take affirmative steps, on an agency-by-agency basis, to ensure compliance with Title VI.

Title VI is only mentioned in four sections of the THRA—*Tennessee Code Annotated*, Sections 4-21-134, 901, 904, and 905—and only the last three are relevant here. According to the state attorney general, *TCA*, Section 4-21-901,

requires all state agencies, including the THRC, to develop and submit annual Title VI implementation plans to the Department of Audit. This provision confers no monitoring or investigatory authority upon the THRC, but rather, imposes the same affirmative Title VI planning and reporting obligation upon the THRC and all other state governmental entities subject to Title VI.

TCA, Section 4-21-904, Tennessee's counterpart to Title VI (42 U.S.C. §2000d, *et seq.*), provides:

It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964, or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving such funds, on the basis of race, color, or national origin.

This provision essentially prohibits state agencies and their grantees from discriminating on account of race, color, or national origin in federally funded activities.

However, if an entity receives funds directly from the federal government, a person could not file a *TCA*, Section 4-21-904 and 905 complaint because state law does not provide for this. Instead, the only recourse would be to file the complaint directly with the federal agency providing the funds.

The state attorney general also states that

the next provision, *TCA*, Section 4-21-905, establishes certain procedures for addressing complaints filed under Section 4-21-904:

Any person claiming to be aggrieved by a discriminatory practice under this part may file a complaint with the state agency receiving the funds within one hundred eighty days (180) of the occurrence of the alleged discriminatory act. An aggrieved person may also file a complaint with the human rights commission, as provided in § 4-21-

302. Complaints filed with the human rights commission are subject to all the powers of the commission and will be subject to all of the procedures set out in part 3 of this chapter. Complaints filed with state agencies are subject to review by the human rights commission for applicability under Title VI of the Civil Rights Act of 1964.

This section allows aggrieved persons to file such complaints with the THRC and with state agencies. The THRC's authority to process these complaints is limited by this provision.

It is the state attorney general's opinion that "Tennessee law affords the THRC limited authority with respect to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, *et seq.* The THRC is required to file its own Title VI implementation plan with the Department of Audit under the THRA, and the THRC may review a complaint filed with a state agency under Tennessee's counterpart to Title VI to advise them whether the complaint raises Title VI issues."

The act does not authorize the THRC to process Title VI complaints. "The THRC may only process complaints and exercise powers specifically listed under Part 3 of the THRA applicable to processing complaints filed under Tennessee's counterpart to Title VI."

Commission Activities Concerning Federal and State Title VI

Although statute only provides for the commission to receive and investigate TCA, Sections 4-21-904 and 905 complaints, the commission's Federal Funds Division has been active in educating state and local agencies and private groups about federal Title VI and state requirements. The program coordinator has informed agencies, groups, and citizens in Tennessee and other states about the Federal Funds program and federal Title VI requirements, established formal relations with state agency and city and county Title VI coordinators, and created complaint procedures and investigation training manuals. Since December 1995, the program coordinator has spoken or provided training to approximately 130 groups in Tennessee and across the country on the requirements of state and federal laws for compliance in federally assisted programs. The program coordinator has also worked with the Department of Finance and Administration attempting to establish a fee system allowing state agencies to be charged for assistance from the commission's Federal Funds program.

Tennessee Code Annotated, Section 4-21-901, requires all state agencies subject to Title VI to develop an implementation plan, including their subrecipients of federal funds, to protect persons from discrimination on the basis of race, color, or national origin. State law requires agencies to send their Title VI implementation plans and plan updates by June 30 of each year to the Department of Audit, which publishes a review indicating the dates submitted and the complaints filed. An executive order issued in 1994 required agencies also to submit the implementation plans to the Department of Finance and Administration's State Planning Office for review. When the State Planning Office was abolished, the Governor did not formally transfer the review responsibility. However, the Human Rights Commission's Federal Funds Division and the Tennessee Legislative Black Caucus review implementation plans and hold public hearings with

state agencies annually. During these hearings, agencies are questioned about their Title VI staffing and activities and are sometimes required to submit plan updates to the Caucus and Federal Funds Division. In August 2000, hearings were held to review the implementation plans of 36 state agencies.

The Federal Funds Division developed a two-phase strategic plan in 1996. The first phase is awareness in the form of educational outreach and technical assistance necessary to effectively enforce Title VI. The second phase is accountability, which includes steps for complaint investigation and monitoring of state agency officials after they are aware of their responsibilities and citizens are informed of their rights. According to the program coordinator, her intention is to make the Federal Funds Division in the Human Rights Commission the source of information and assistance for state agency Title VI coordinators.

Complaints are investigated by the state agency against whom the complaint is filed under their federal Title VI authority or by the commission's Federal Funds Division under *TCA*, Sections 4-21-904 and 905. According to the commission's Federal Funds Division, as of December 2000, a total of 45 Title VI and *TCA*, Sections 4-21-904 and 905 complaints have been filed with agencies since July 1, 1994. The program coordinator monitors the cases the various agencies are handling and provides technical assistance and information.

However, the commission has no statutory authority to monitor, process, investigate, or provide technical assistance regarding a discrimination complaint filed under Title VI of the 1964 Civil Rights Act. The commission also has no authority to review annual implementation plans filed with the Department of Audit or to provide training and information regarding federal Title VI issues or matters.

Recommendations

The General Assembly may wish to consider amending Section 4-21-901, *Tennessee Code Annotated*, to require agencies to submit their annual Title VI compliance reports and implementation plan updates to the Human Rights Commission. The General Assembly may also wish to consider amending Section 4-21-901 or adding a new section setting forth specific responsibilities of the Human Rights Commission to

- review the annual reports and implementation plans,
- hold public hearings on each agency's plan to allow for legislative and public input,
- make recommendations to state agencies when plans are found deficient,
- follow up to ensure revised plans are submitted, and
- report annually to the General Assembly on the status of implementation plans and the status of complaints filed with the commission and state agencies.

The commissioners and executive director should evaluate the program, its future direction, and the level of staffing needed in order to determine how best to accomplish the goals set for the program. If given additional responsibilities by the General Assembly, the Human Rights

Commission staff should be increased. Consideration should be given to cross-training all commission investigators to broaden the base of staff available to investigate *TCA*, Sections 4-21-904 and 905 complaints received by the commission.

The commission's Federal Funds Division should not be involved in the federal Title VI investigations being conducted by state agencies, as the division has no federal authority to provide such technical assistance. The division should remain independent in the event a complainant wishes for a state *TCA*, Sections 4-21-904 and 905 investigation to be conducted.

Management's Comment

We concur. If it is the will of the General Assembly to change the responsibilities of the Tennessee Human Rights Commission in this area, the commission and its executive director will propose a plan which includes any additional resources needed to implement any recommended changes. The legislative and administrative recommendations are feasible if the agency receives appropriate resources.

RECOMMENDATIONS

LEGISLATIVE

The General Assembly may wish to consider amending Section 4-21-901, *Tennessee Code Annotated (TCA)*, to require agencies to submit their annual Title VI compliance reports and implementation plan updates to the Human Rights Commission. The General Assembly may also wish to consider amending Section 4-21-901 or adding a new section setting forth specific responsibilities of the Human Rights Commission to

- review the annual reports and implementation plans,
- hold public hearings on each agency's plan to allow for legislative and public input,
- make recommendations to state agencies when plans are found deficient,
- follow up to ensure revised plans are submitted, and
- report annually to the General Assembly on the status of implementation plans and the status of complaints filed with the commission and state agencies.

ADMINISTRATIVE

The commissioners and executive director should evaluate the program, its future direction, and the level of staffing needed in order to determine how best to accomplish the goals set for the program. If given additional responsibilities by the General Assembly, the Human Rights Commission staff should be increased. Consideration should be given to cross-training all commission investigators to broaden the base of staff available to investigate *Tennessee Code Annotated*, Sections 4-21-904 and 905 complaints received by the commission.

The commission's Federal Funds Division should not be involved in the federal Title VI investigations being conducted by state agencies, as the division has no federal authority to provide such technical assistance. The division should remain independent in the event a complainant wishes for a state *TCA*, Sections 4-21-904 and 905 investigation to be conducted.

State of Tennessee

HOUSE JOINT RESOLUTION NO. 176

By Representatives Brown, Pruitt, Towns, Bowers, Lois DeBerry, Brooks

and

Senator Cohen

A RESOLUTION concerning the Tennessee Human Rights Commission.

WHEREAS, enacted in 1995, Tennessee Code Annotated, Section 4-21-904, prohibits discriminatory practices by State agencies receiving federal funding subject to the provisions of Title VI of the Civil Rights Act of 1964, and also prohibits discriminatory practices by persons and entities receiving such funding through State agencies; and

WHEREAS, Section 4-21-904, also states that it is a discriminatory practice for any such agency, person or entity, (on the basis of an individual's race, color or national origin), to exclude from participation, to deny benefits, or to subject to prejudicial treatment under any program or activity receiving such funds; and

WHEREAS, enacted in 1995, Section 4-21-905, authorizes any person aggrieved by any such discriminatory practice to file a complaint with the Tennessee Human Rights Commission; and

WHEREAS, Section 4-21-905, requires the Tennessee Human Rights Commission to review any such complaint filed directly with a State agency; and

WHEREAS, four years have now elapsed and many citizens criticize the Tennessee Human Rights Commission for its tepid efforts to promote and ensure Title VI compliance by affected State agencies, persons and entities; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED FIRST GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, That this Body does hereby urge the Tennessee Human Rights Commission to more vigorously fulfill the letter and intent of its Title VI statutory mandate; and

BE IT FURTHER RESOLVED, That this Body does hereby urge the Tennessee Human Rights Commission to act more effectively and efficiently to:

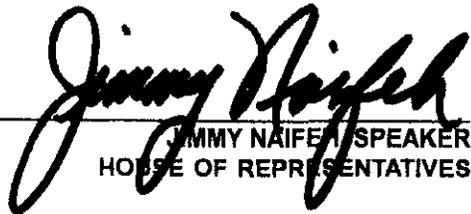
- (1) Timely undertake and complete Title VI investigations;
 - (2) Provide technical assistance necessary to facilitate resolution of discriminatory activities in violation of Title VI;
 - (3) Inform Tennesseans of the purposes of and protections afforded by Title VI;
- and
- (4) Review and evaluate Title VI implementation plans.

BE IT FURTHER RESOLVED, That the Comptroller of the Treasury is hereby requested to undertake a performance evaluation of the various Title VI activities, programs and resources of the Tennessee Human Rights Commission and to report, on or before January 11, 2001, its written findings and recommendations to the State and Local Government Committee of the Senate and to the State and Local Government Committee of the House of Representatives.

BE IT FURTHER RESOLVED, That the Clerk of the House of Representatives is directed to deliver copies of this resolution to the Tennessee Human Rights Commission and to the Comptroller of the Treasury.

HOUSE JOINT RESOLUTION NO. 176

ADOPTED: FEBRUARY 10, 2000



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this _____ day of _____ 2000

DON SUNDQUIST, GOVERNOR



BETTY KAY FRANCIS
CHIEF ENGRAVING CLERK

House of Representatives State of Tennessee

STATE CAPITOL BUILDING
HOUSE CHAMBER
NASHVILLE, TENNESSEE 37219
(615) 741-2488

February 23, 2000

The Honorable Riley Darnell
Secretary of State
Nashville, Tennessee 37243

Dear Mr. Secretary of State:

I am transmitting herewith House Joint Resolution No. 176. The Governor received House Joint Resolution No. 176 on February 10, 2000 and returned the resolution on February 23, 2000.

The Governor had the resolution in his possession longer than ten (10) days, as provided for in Article III, Section 18 of the Constitution of the State of Tennessee. Therefore, House Joint Resolution No. 176 becomes law without the Governor's signature.

A handwritten signature in cursive script that reads "Betty Kay Francis".

Betty Kay Francis
Chief Engraving Clerk

BKF/

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

June 12, 2000

Opinion No. 00-107

Authority of the Tennessee Human Rights Commission

QUESTIONS

The Tennessee Human Rights Commission has asked for our opinion on the following questions:

1. Under the Tennessee Human Rights Act [THRA], what authority does the Commission have to enforce:

(a) Title VI of the Federal Civil Rights Act of 1964?

(b) Tennessee Code Annotated § 4-21-904?

2. (a) Under the THRA, does the Commission have authority to enforce Title VI of the 1964 Civil Rights Act and the Civil Rights Restoration Act of 1987 relative to state agencies, local government entities, educational institutions, private for profit and non-profit corporations?

(b) Under the THRA, does the Commission have authority to enforce TENN. CODE ANN. § 4-21-904 relative to state agencies, local government entities, educational institutions, private for profit and non-profit corporations?

3. (a) Under the THRA, does the Commission have authority to monitor recipients and sub-recipients of federally funded programs and activities for compliance with Title VI of the 1964 Civil Rights Act?

(b) Under the THRA, does the Commission have authority to monitor recipients and sub-recipients of federally funded programs and activities for compliance with TENN. CODE ANN. § 4-21-904?

4. (a) Under the THRA, does the Commission have the authority to monitor and enforce Title VI of the Civil Rights Act of 1964 relative to local government boards, commissions and authorities when they are making public policy concerning the expenditure of federal funds?

(b) Under the THRA, does the Commission have the authority to monitor and enforce TENN. CODE ANN. § 4-21-904 relative to local government boards, commissions and authorities when they are making public policy concerning the expenditure of federal funds?

5. (a) Under the THRA, does the Commission have the authority to directly or indirectly impact the termination or withholding of federal assistance for non-compliance with Title VI of the Civil Rights act of 1964?

(b) Under the THRA, does the Commission have the authority to directly or indirectly impact the termination or withholding of federal assistance for non-compliance with TENN. CODE ANN. § 4-21-904?

6. (a) Under the THRA, does the Commission have the authority to enforce Title VI of the 1964 Civil Rights Act relative to minority participation in the distribution of federal funds?

(b) Under the THRA, does the Commission have the authority to enforce TENN. CODE ANN. § 4-21-904 relative to minority participation in the distribution of federal funds?

7. Under the THRA, does the Commission have the authority to investigate complaints filed under:

(a) Title VI of the U.S. Civil Rights Act of 1964?

(b) TENN. CODE ANN. § 4-21-905?

8. Under the THRA, does the Commission have the authority to:

(a) provide technical assistance necessary to facilitate resolution of discriminatory activities in violation of Title VI?

(b) Inform Tennesseans of the purposes of and protections afforded by Title VI?

(c) Review and evaluate Title VI implementation plans?

9. What are the definitions of "program" or "activity" under the THRA?

OPINIONS

1. (a) The THRC does not have any authority to enforce Title VI of the Civil Rights Act of 1964 ("Title VI").

(b) Under TENN. CODE ANN. § 4-21-905, the THRC has the authority to process complaints alleging violations of TENN. CODE ANN. § 4-21-904. The THRC is also authorized to review complaints filed with state agencies under TENN. CODE ANN. § 4-21-905 to determine whether Title VI is applicable; *i.e.*, to determine whether a State agency program or activity that is the subject of the complaint is subject to Title VI.

2. (a) The THRC does not have any authority to enforce Title VI or the Civil Rights Restoration Act of 1987 ("Restoration Act").

(b) The THRC is authorized to process complaints alleging violations of TENN. CODE ANN. § 4-21-904 against state agencies or person[s] receiving federal funds from a state agency. Thus, "local government entities, educational institutions, private for profit and non-profit corporations" would only be included in specific instances where they are considered "person[s] receiving such federal funds from a state agency." TENN. CODE ANN. § 4-21-904; TENN. CODE ANN. § 4-21-102(14). *See also* answers to 1(b) and 2(a) above.

3. (a) The THRC does not have any authority to monitor recipients and sub-recipients of federally funded programs for compliance with Title VI.

(b) The THRC, moreover, has no direct authority to monitor recipients and sub-recipients of federally funded programs and activities for compliance with TENN. CODE ANN. § 4-21-904, except to the extent that it is implicit in the THRC's authority to: (1) process complaints alleging violations of TENN. CODE ANN. § 4-21-904, (2) review complaints filed against State agencies for the applicability of Title VI, or (3) evaluate itself to determine its own compliance with Title VI in order to prepare and submit the THRC's implementation plan under TENN. CODE ANN. § 4-21-901.

4. (a) and (b) No. *See* Answers to Questions 3(a) and 3(b), above.

5. (a) and (b) No. *See* Answers to Questions 3(a) and 3(b), above.

6. (a) and (b) No. *See* Answers to Questions 3(a) and 3(b), above.

7. (a) No. The THRC does not have any authority to investigate complaints filed under Title VI. *See also* Answer to Question 1(a), above.

(b) Under TENN. CODE ANN. § 4-21-905, the THRC has the authority to process complaints alleging violations of TENN. CODE ANN. § 4-21-904, which would include the authority to investigate such complaints as provided in TENN. CODE ANN. § 4-21-302. The THRC is also authorized to review complaints filed with state agencies under TENN. CODE ANN. § 4-21-905 to determine whether Title VI is applicable. *See also* Answer to Question 1(b), above.

8. (a) No. However, the THRC is authorized to review complaints filed with State agencies under TENN. CODE ANN. § 4-21-905 to determine whether Title VI is applicable. *See also* Answers to Questions 1(b) & 7(b), above.

(b) No.

(c) No. TENN. CODE ANN. § 4-21-901 provides that the Implementation Plans are to be submitted to the Department of Audit, not the THRC.

9. The definitions of “program” or “activity” under the THRA are meant to mirror the definitions contained in Title VI and the Restoration Act.

ANALYSIS

Federal Framework

Title VI is codified at 42 U.S.C. § 2000d, *et seq.* and provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Restoration Act addressed several federal civil rights laws, and most relevant to Title VI, defined the terms “program” and “activity” expansively for Title VI purposes.¹

The federal scheme does not allow aggrieved persons to file administrative complaints, but the courts have concluded that Title VI creates a private right of action allowing aggrieved persons to file lawsuits directly in federal court.² Federal authorities can monitor, investigate and take agency enforcement initiatives, particularly under the Title VI federal regulations. As we have previously opined,³ the federal government is charged with the responsibility of monitoring and investigating state agencies and private entities to compel compliance with Title VI under possible forfeiture of federal grants and similar sanctions.

¹42 U.S.C. § 2000d-4a. For a more elaborate discussion of these definitions and the overall federal scheme, *See* OP. TENN. ATTY. GEN. 92-47 (May 28, 1992)(copy attached).

²*Neighborhood Action Coalition v. Canton, Ohio*, 882 F.2d 1012, 1015 (6th Cir. 1989).

³*See* OP. TENN. ATTY. GEN. U95-043 (April 25, 1995)(copy attached).

Title VI, and its regulations, put an affirmative duty on state agencies to make sure that they do not discriminate on account of race, color, or national origin. Title VI does not require a State to set up "compliance" agencies to monitor and investigate other state agencies. Title VI does not delegate to state agencies the authority to process and resolve administrative complaints against state agencies. Title VI contemplates that the federal government will enforce Title VI and that state agencies will take affirmative steps, on an agency-by-agency basis, to ensure compliance with Title VI.

Tennessee Framework

Title VI is only mentioned in four sections of the THRA: TENN. CODE ANN. §§ 4-21-134, 4-21-901, 4-21-904 and 4-21-905. In TENN. CODE ANN. § 4-21-134, the Comptroller of the Treasury is specifically authorized and directed to complete a study of mass transit service for "inner city neighborhoods" with special attention to the "treatment of racial minorities and other protected classes under this chapter and Title VI of the Federal Civil Rights Act of 1964." This provision does not appear to be directly relevant to your questions, except to the extent that it indicates that the General Assembly concluded that authorization to do studies to address specific Title VI issues required a specific statutory pronouncement.⁴

TENN. CODE ANN. § 4-21-901 requires all state agencies, including the THRC, to develop and submit annual Title VI implementation plans to the Department of Audit. This provision, however, confers no monitoring or investigatory authority upon the THRC, but rather, imposes the same affirmative Title VI planning and reporting obligation upon the THRC and all other state governmental entities subject to Title VI.

TENN. CODE ANN. § 4-21-904, Tennessee's counterpart to Title VI, provides:

It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights act of 1964, or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving such funds, on the basis of race, color, or national origin.

This provision essentially prohibits state agencies and their grantees from discriminating on account of race, color or national origin in federally funded activities.

⁴For further discussion of the scope of the THRA, see OP. TENN. ATTY. GEN. No. 99-192 (Sept. 28, 1999)(copy attached).

The next provision, TENN. CODE ANN. § 4-21-905, establishes certain procedures for addressing complaints filed under TENN. CODE ANN. §4-21-904:

Any person claiming to be aggrieved by a discriminatory practice under this part may file a complaint with the state agency receiving the funds within one hundred eighty days (180) of the occurrence of the alleged discriminatory act. An aggrieved person may also file a complaint with the human rights commission, as provided in § 4-21-302. Complaints filed with the human rights commission are subject to all the powers of the commission and will be subject to all of the procedures set out in part 3 of this chapter. Complaints filed with state agencies are subject to review by the human rights commission for applicability under Title VI of the Civil Rights Act of 1964.

This section allows aggrieved persons to file such complaints with the THRC and with state agencies. The THRC's authority to process these complaints is limited by this provision.

CONCLUSION

In summary, Tennessee law affords the THRC limited authority with respect to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* In essence, the THRC is required to file its own Title VI implementation plan with the department of audit under the THRA,⁵ and the THRC may review a complaint filed with a State agency under Tennessee's counterpart to Title VI⁶ to advise them whether the complaint raises Title VI issues.⁷

Although the THRA does not authorize the THRC to process Title VI complaints, the THRC may process complaints filed under Tennessee's counterpart to Title VI.⁸ TENN. CODE ANN. § 4-21-905 provides that complaints alleging violation of Tennessee's counterpart to Title VI are processed under Part 3 of the THRA.⁹ This provision, however, does not provide that the THRC may exercise all of its powers under TENN. CODE ANN. § 4-21-202 when dealing with issues arising under Title

⁵TENN. CODE ANN. § 4-21-901.

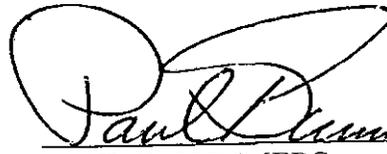
⁶TENN. CODE ANN. § 4-21-904.

⁷TENN. CODE ANN. § 4-21-905.

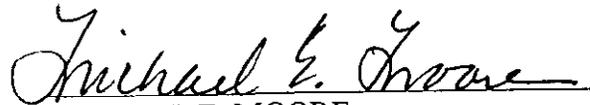
⁸TENN. CODE ANN. § 4-21-905.

⁹TENN. CODE ANN. §§ 4-21-301--312.

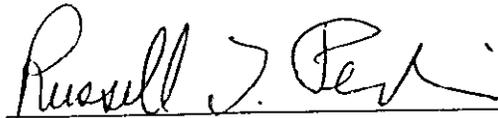
VI or TENN. CODE ANN. § 4-21-904.¹⁰ Instead, the THRC is not authorized to process Title VI complaints and can only exercise powers specifically listed under Part 3 of the THRA applicable to processing complaints with respect to Tennessee's counterpart to Title VI. Consequently, the THRC's powers relating to Tennessee's Title VI counterpart only extend to processing complaints, and those powers may only be exercised under the procedures set forth under Part 3 of the THRA.¹¹



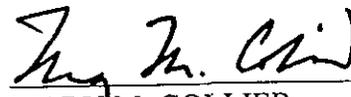
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¹⁰This conclusion is supported by the Legislative History of TENN. CODE ANN. § 4-21-904.

¹¹We have previously opined that state legislative efforts to shift Title VI enforcement to the THRC from the federal government raise preemption concerns under the United States Constitution. See Op. Tenn. Atty. Gen. No. U95-043 (April 25, 1995)(copy attached).