



MICHIGAN CIVIL RIGHTS COMMISSION

RESOLUTION

Requesting Reconsideration of AG Opinion 7305

Whereas, on May 21, 2018 the Michigan Civil Rights Commission (Commission) promulgated Interpretive Statement 2018-1, and

Whereas, in that statement the Commission determined the language prohibiting discrimination “because of...sex” was ambiguous as used in the Elliott Larsen Civil Rights Act and interpreted the Act to encompass discrimination because of gender identity and sexual orientation, and

Whereas, on July 20, 2018 the Attorney General issued a formal, Attorney General Opinion No. 7305, and

Whereas, Attorney General Opinion 7305 found that the Commission’s interpretive statement is invalid because it conflicts with the original intent of the Legislature as expressed in what he called “the plain language of the Act, and as interpreted by Michigan’s courts,” and

Whereas, the Commission, determined that Attorney General Opinion 7305 did not void the Interpretive Statement because:

- By Constitution and Statute, the Commission is the penultimate authority designated to interpret what is determined was ambiguous language in the Elliott Larsen Civil Rights Act, and
- Once the interpretive statement was issued, if the Attorney General wished to invalidate the Commission’s determination, he could only do so by bringing a court action challenging it, and
- the Attorney General’s opinion was premised upon the statute’s language being “unambiguous”, an untenable position given the opinions of the Sixth Circuit Court of Appeals and other courts that have ruled the phrase “because of sex” is inclusive.

Thus, the Commission instructed the Department to continue accepting and investigating cases pursuant to Interpretive Statement 2018-1, and

Whereas, the Assistant Attorney General assigned to the Commission informed the Commission that it would not be represented by the Attorney General if it were legally challenged for interpreting the statute differently than as directed by the Attorney General, and he further instructed that Commissioners who supported the Interpretation would waive their statutory immunity by disagreeing with the wishes of Attorney General, and

Whereas, it is necessary that the Commission understands where Interpretive Statement 2018-1 stands legally, and

Whereas, it is necessary that the Commission knows whether the office of the Office of Attorney General will represent the Commission or individual Commissioners if there is litigation to which it or they are a party, and

Whereas, it is necessary that the Commission understands whether the Office of Attorney General will represent the interests of the Department should a legal action be brought challenging the Department’s jurisdiction to investigate a complaint pursuant to Interpretive Statement 2018-1 and contrary to Attorney General Opinion 7305.

It is therefore resolved that the Michigan Civil Rights Commission requests that the Michigan Attorney General review and reconsider the conclusions reached in Attorney General Opinion 7305 promulgated July 20, 2018, and that once adopted this resolution constitutes the request.

It is further resolved that the Attorney General provide the Commission with an assurance that the Assistant Attorney General assigned to act as Commission Counsel will represent the Commission’s interests by presenting it with legally supportable options available to it while considering an action and defending the Commission’s interests and Constitutional Authority even when different than the Office of the Attorney General.



Passed unanimously on the 1st day of February, 2019, by the
MICHIGAN CIVIL RIGHTS COMMISSION

Alma Wheeler Smith, Chair	Stacie Clayton, Vice Chair
Laura Reyes-Kopack, Secretary	Ira Combs
Rasha Demashkieh	Regina Gasco-Bentley
Denise Grim	Jeffrey Sakwa