

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37243-0497

June 12, 2000

Opinion No. 00-107

Authority of the Tennessee Human Rights Commission

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**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.<sup>1</sup>

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.<sup>2</sup> Federal authorities can monitor, investigate and take agency enforcement initiatives, particularly under the Title VI federal regulations. As we have previously opined,<sup>3</sup> 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.

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<sup>1</sup>42 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).

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

<sup>3</sup>*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.<sup>4</sup>

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.

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<sup>4</sup>For 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,<sup>5</sup> and the THRC may review a complaint filed with a State agency under Tennessee's counterpart to Title VI<sup>6</sup> to advise them whether the complaint raises Title VI issues.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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

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<sup>5</sup>TENN. CODE ANN. § 4-21-901.

<sup>6</sup>TENN. CODE ANN. § 4-21-904.

<sup>7</sup>TENN. CODE ANN. § 4-21-905.

<sup>8</sup>TENN. CODE ANN. § 4-21-905.

<sup>9</sup>TENN. CODE ANN. §§ 4-21-301--312.

VI or TENN. CODE ANN. § 4-21-904.<sup>10</sup> 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.<sup>11</sup>

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

<sup>11</sup>We 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).