

ORDINANCE NO. 74-I
HUMAN RIGHTS ORDINANCE

As authorized by the General Assembly of the State of Indiana, Acts 1961, C. 208, s. 12, as amended by Acts 1971, P.L. 357, s. 8. the Commissioners of Floyd County, Indiana, enact the following ordinance creating a Human Rights Commission and extending to all the residents of Floyd County equal opportunity for education, employment, access to public accommodations and acquisition of real property through purchase or rental.

SECTION 1. Public Policy and Purpose

- (a) It is the public policy of the State of Indiana to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition of real property through purchase or rental, and to eliminate segregation or separation based solely upon race, religion, color, sex, national origin or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public facilities and accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.
- (b) The practice of denying these rights to properly qualified persons by reason of the race, religion, color, sex, national origin or ancestry of such person is contrary to the principles of freedom and equality of opportunity and a burden to the objectives of the public policy of this county and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, national origin or ancestry through reasonable methods is the purpose of this ordinance.

- (a) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.
- (b) The term "commission" shall mean the Floyd County Human Rights Commission hereinafter created.
- (c) The term "director" shall mean the director of the Floyd County Human Rights Commission.
- (d) The term "commission attorney" shall mean the County Attorney or such assistants of the County Attorney as may be assigned to the commission by the County Attorney or such other attorney who voluntarily lends his services at the request of the commission.
- (e) The term "consent agreement" shall mean a formal agreement entered into in lieu of adjudication.
- (f) The term "affirmative action" shall mean those acts which the commission deems necessary to assure compliance with Floyd County Human Rights Ordinance.
- (g) The term "employer" includes the state, or any political or civil subdivision thereof, and any person employing six (6) or more persons within the state, except that the term "employer" does not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes, nor any school, educational, or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution, nor any exclusively social club, corporation or association that is not organized for profit.

(c) It is also the public policy of this county to protect employers, labor unions or organizations, employment agencies, property owners, real estate brokers, builders and lending institutions from unfounded charges of discrimination.

(d) It is hereby declared to be contrary to the public policy of Floyd County and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, national origin or ancestry.

(e) It is further the public policy of this county to insure that all handicapped persons shall be entitled to full and equal access, as other members of the public to all housing accommodations offered for rent, lease, or compensation in this county, provided, however, that the effectuation of such public policy shall not require any person renting, leasing or providing for compensation real property to modify his property in any way to provide a higher degree of care for a handicapped person than for one who is not so handicapped. Any person renting, leasing, or providing real property for compensation shall not refuse to accept a handicapped person as a tenant by reason of the fact that such person has a guide dog that assists such person in overcoming any particular handicap.

(f) This ordinance shall be construed broadly so as to effectuate its purpose.

SECTION 2. Definitions

(h) The term "employee" includes any person employed by another for wages or salary: provided, however, that it should not include any individual employed by his parents, spouse, or child, or in the domestic service of any person.

(i) The term "labor union or organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(j) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees.

(k) The term "discriminatory practice" shall mean the exclusion of a person from equal opportunities because of race, religion, color, sex, national origin or ancestry; or a system which excludes persons from equal opportunities because of race, religion, color, sex, national origin or ancestry; or the promotion of racial segregation or separation in any manner, including but not limited to, the inducing of or the attempting to induce, for profit, any person to sell or rent any dwelling by representation regarding the entry into the neighborhood of a person of a particular race, religion, color, sex, national origin or ancestry. Every discriminatory practice relating to the acquisition or sale of real property, education, public accomodation or employment shall be considered unlawful unless specifically exempted by this ordinance.

(l) The term "public accomodation" means any establishment which caters or offers its services or facilities or goods to the general public.

(m) The term "housing accomodation" shall mean any real property, or portion thereof, which is used or occupied or is intended, arranged, or designed to be used or occupied as a home, residence, or sleeping place of one or more persons; or any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein. The term shall not include any hotels, lodging places, or other places of public accomoda-tions, amusement, or resort of a transient nature.

(n) The term "complainant" means any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice or a commissioner of the Floyd County Human Rights Commission charging that a discriminatory practice was committed against a person other than himself, or a class of people, in order to vindicate the public polocy of the State of Indiana as defined in Section 1 of this ordinance.

(o) The term "complaint" means any written agreement filed by a complainant with the Commission. The original complaint shall be signed and verified before a notary public or other person duly author-ized by law to administer oaths and take acknowledge-ments. Notarial service shall be furnished by the Commission without charge. To be acceptable a com-plaint shall be sufficiently comple~~te~~ so as to

reflect the full name and address of the complainant; the name and address of the respondent, the individual against whom the complaint is made; the alleged discriminatory practice and a statement of the particulars thereof; the date or dates and places of the alleged discriminatory practice, and if the alleged discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action. No complaint shall be valid unless filed with the Commission within ninety days of the date of the occurrence of the alleged discriminatory practice or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer, or labor union.

(p) The term "sex" as it is applied to segregation or separation in this ordinance shall apply to all types of employment, education, public accommodations, and housing: providing, however, that (1) it shall not be a discriminatory practice to maintain separate restrooms; and that (2) it shall not be any unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual or a labor union or organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling

apprenticeship or other training or retraining programs, to admit or employ any other individuals in any such program on the basis of sex in those certain instances where sex is a bonafide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and that (3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only.

(q) The term "handicapped persons" shall mean all individuals who by reason of physical or mental defects or infirmity, whether congenital or acquired by accident, injury, or disease, are, or may hereafter be, totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, and vocational participation in the normal process of living. Handicapped persons shall include, but not be limited to blind and visually handicapped individuals.

SECTION 3. Civil Rights Commission Created - Membership - Terms

(a) There is hereby created a Human Rights Commission composed of seven members who are residents of Floyd County, Indiana, and are representative of the racial, ethnic, religious, economic, and educational groups in the community. The members of the Commission shall be appointed by the Floyd County Commissioners within thirty days of the effective date of this ordinance. Of the seven members first appointed to the Commission, three shall be appointed for terms of one year, two shall be appointed for terms of two years, and two shall be appointed for terms of three years.

Thereafter, each appointment shall be for a term of three years. The first meeting of the commission shall be called by the first member appointed within thirty days of the appointment of the last member appointed. At the first meeting and at each annual meeting held thereafter, the commission shall organize by the election of a chairman, vice chairman, and secretary, each of whom, except those first elected shall serve for a term of one year and until his successor is elected. The Commission shall meet once each month at a regularly published time and place and shall hold such special meetings as the Chairman deems necessary or as shall be requested by a majority of its members.

(b) If a member dies or resigns, his successor shall be appointed to serve the unexpired term to which his predecessor had been appointed. The Commissions of Floyd County may remove members of the Human Rights Commission for cause but for no other reason.

(c) The expenses necessary for Commission activities shall be budgeted for and paid out of funds in the County Treasury, as the same may be appropriated for such purposes; however, the Commission shall be and is vested with the authority to accept gifts or bequests, or other payments, public or private, subject only to the approval thereof by the Floyd County Commissioners.

SECTION 4 Powers and Duties

The Commission shall have the following powers and duties:

(a) To create and appoint subcommittees and advisory committees as in the judgement of the

Commission are necessary to effectuate the purposes stated in this ordinance.

(b) To adopt, promulgate, amend and rescind rules and regulations, procedural and substantive, necessary to effectuate purposes of this ordinance. Such rules and regulations of the Commission shall be published and made available to the public in the office of the County Clerk.

(c) To issue such publications and make such pronouncements as in the judgement of the Commission will tend to minimize or eliminate discrimination because of race, religion, color, sex, national origin or ancestry.

(d) To prepare and issue annually a report to the Floyd County Commissioners describing in detail such investigations or other proceedings conducted and the results thereof, as well as a statement with respect to such other actions or activities undertaken by the Commissioners in fulfillment of its responsibilities.

(e) To formulate policies deemed necessary to effectuate the purposes of this ordinance and to make recommendations to the County and its subdivisions with respect to implementation of the policies so formulated.

The several departments, commissions, boards, authorities, divisions, and the officers of the County and its subdivisions shall furnish the Commission, upon request, such records, papers, or other information in their possession relating to any matter before the Commission.

(f) To make a prompt and full investigation of each complaint properly before the Commission relating to an unlawful discriminatory practice: provided, the

Commission shall not conduct proceedings relative to an alleged discriminatory practice in the absence of a duly filed complaint as the same is herein defined in Section 2 (o).

(g) To hold public hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and to require the production for examination of any books and papers relating to any matter under investigation or in question before the Commission. The Commission may make rules as to the issuance of subpoenas by individual Commissioners. Contumacy or refusal to respond to a subpoena issued pursuant to this section shall constitute a contempt. A citation of contempt may be issued, upon application by the Commission to the Floyd Circuit Court or judge thereof.

(h) To state its findings of fact after hearing and, if the Commission finds a person has engaged in an unlawful discriminatory practice, it may cause to be served on such person an order requiring such person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action as would effectuate the purposes of this ordinance including, but not limited to the power to restore complainants losses incurred as a result of discriminatory treatment, as the Commission may deem necessary to insure justice. If the Commission finds that the respondent has not engaged in any unlawful practice or violation of this ordinance as alleged, the findings of the Commission shall so state and the Commission shall issue and cause to be served on the complainant an order dismissing said complaint as to such person.

(i) To review compliance of all Consent Agreements approved by the Commission. If, upon review, the Commission determines that a party to such agreement is not complying with the terms thereof, the Commission may seek enforcement of such Consent Agreement in the Floyd Circuit Court; provided, however that such party is subject to the Commission's jurisdiction and resides or transacts business within the County in which the petition for enforcement is brought.

(j) To issue temporary emergency orders against any person necessary for the preservation of a remedy which may reasonably result following the conclusion of the investigation into the complaint giving rise to such order; provided, however:

1. No emergency order shall be issued unless the time and place for the hearing on such temporary emergency order is designated in the order;

2. A hearing into the matter of the temporary emergency order shall be held within fifteen days following the issuance thereof, unless same may be continued by the Commission upon the request of the Respondent. At such hearing the Complainant must demonstrate that a failure to continue the temporary order would adversely affect the remedy sought to be attained by complainant's complaint. Upon reviewing the comparative hardship to complainant and respondent, the Commission shall order the continuation or termination of the temporary emergency order pending final disposition of the complaint.

3. The Commission may by rule provide for the issuance of a temporary emergency order by single member of the Commission, and it may compel compliance with the terms of such temporary order by resort to

action in the Floyd Circuit Court.

(k) To prevent, by action of the Commission, any person from discharging or expelling or otherwise discriminating against any other person because of the fact that he filed a complaint with or testified in any hearing before the Commission or in any way assisted the Commission with respect to any matter under investigation.

SECTION 5 Investigation of Complaints

(a) Upon receipt of a duly filed complaint the Chairman of the Commission shall designate a member thereof to conduct an initial investigation into the allegations contained in said complaint. The member so appointed or designated shall be thereafter disqualified from hearing or making a final decision on the complaint, but may, nevertheless, appear as a witness if a public hearing is thereafter held.

(b) If after the initial investigation the Commissioner conducting same shall determine the absence of probable cause to believe the allegations contained in the complaint to be true, the Complainant shall be furnished with a copy of the Commissioner's findings of fact and recommendations to the Commission. Thereupon the Complainant shall be given ten days within which to lodge with the Commission a written request, stating in detail the reasons therefor, for review of the findings of the Commissioner with respect to the existence of probable cause. Upon the receipt of such a request, the Chairman of the Commission shall establish the date for a public hearing before the entire Commission, at which time the Commissioner's report together with such evidence as may be presented by the Complainant will be considered. A majority vote of the Commission on

the issue of the existence of probable cause shall be final. If the findings of the investigating Commissioner are sustained by vote of the Commission following a public hearing thereon, the complaint shall be ordered dismissed in accordance with Section 4 (h) of this ordinance.

(c) If after investigation the Commissioner conducting same determines there to be probable cause to believe the allegations contained in the complaint are true, the investigating Commissioner shall attempt personally to remediate the matter through conciliation, and reduce the terms of the remediation to writing, said writing shall constitute a Consent Agreement upon execution thereof by the parties thereto. Upon approval by a majority of the Commissioners, which approval shall be evidenced by their signatures thereon, the Consent Agreement shall have the same effect as a cease and desist order.

(d) If after a finding of probable cause is entered the investigating Commissioner is unable to successfully remediate the complaint into a Consent Agreement, this fact shall be communicated to the Chairman of the Commission who shall establish the date for a public hearing before the entire Commission for the purpose of determining whether or not the allegations contained in the complaint are true.

(e) The Commission shall serve upon the person charged by the complaint with having engaged in the discriminatory practice, the Respondent, a statement of the charges made in the complaint and a notice of the time and place of the hearing to be conducted. The date of the hearing shall not be less than fifteen days

nor more than sixty days following service upon the Respondent of the statement of charges, unless this requirement shall be waived by the mutual consent of the Complainant, Respondent, and the Commission. The Respondent shall have the right to file with the Commission an answer to the statement of charges, and each party shall have the right to appear as a witness or otherwise at the hearing, to be represented by an attorney, to present evidence, and to examine and cross-examine witnesses.

(f) A public hearing called by the Commission shall be conducted in an informal manner and without recourse to technical common-law rules of evidence, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact.

(g) A public hearing conducted by the Commission shall be presided over by one or more members of the Commission or by a hearing officer appointed by the Commission for this purpose. The presiding official shall have the power to rule upon offers of proof and receipt of relevant oral or documentary evidence, to take or cause depositions to be taken, to regulate the course of the hearing and the conduct of the parties, to hold informal conferences for the settlement or simplification of the issues by consent of the parties, and to dispose of procedural motions and similar matters.

(h) The Commission shall cause a record of the public hearing to be made. The transcript of testimony adduced and exhibits admitted, together with the notice or notices of the hearing, all pleadings, exceptions,

motions, requests and papers filed shall constitute the complete record of such hearing and determination. Any party may obtain a copy of such record at his own expense.

(i) All final orders and determinations of the Commission shall be made by a majority vote of the full Commission as evidenced by their signatures thereon.

SECTION 6 Judicial Review

Judicial review of actions of the Floyd County Human Rights Commission shall be obtained in accordance with the provisions of Ind. Stat. Ann. Sections 63-3001 -- 63-3030 (Burns, 1961) as may hereafter be amended. If no proceedings for judicial review are instituted within fifteen days from the receipt of notice by a person upon whom an order of the Commission is served compliance with such order may be sought by action in the Floyd Circuit Court upon showing that such person is subject to the Commission's jurisdiction and resides or transacts business within the County.

SECTION 7 Construction of the Ordinance and the Rules and Regulations

This ordinance and any rules or regulations promulgated pursuant to this ordinance shall be broadly construed to accomplish the purpose of this ordinance and the policies of the Commission.

SECTION 8 Severability

The provisions of the ordinance are severable and, if any provisions, sentence, clause, section or parts thereof is held illegal, invalid, unconstitutional or inapplicable, it shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid, or unconstitutional provisions, sentences, clauses, sections, or parts had not been included therein.

SECTION 9

This ordinance shall be in full force and effect from after its passage, approval and publication according to the laws of the State of Indiana.

Passed this 3rd day of June, 1974.

Raymond Libs
Raymond Libs, Chairman

Vincent H. Freiburger
Vincent Freiburger, Member

F. Jerry Loftus
F. Jerry Loftus, Member

Attest: Fredrick S. Helmer
Auditor, Floyd County, Indiana