

**Date** August 29, 2011

COMMUNICATION FROM THE DES MOINES HUMAN RIGHTS COMMISSION TO REQUEST THE  
CITY COUNCIL TO AMEND THE DES MOINES MUNICIPAL CODE  
TO CONFORM TO THE IOWA CODE CHAPTER 216  
BY ADDING GENDER IDENTITY AS A PROTECTED CLASS

WHEREAS, on August 11, 2011, the Des Moines Human Rights Commission passed a motion to request the city council to amend the City of Des Moines Human Rights Ordinance to be in compliance with Chapter 216 of the Code of Iowa by adding gender identity as a protected class; and

WHEREAS, the motion from the commission also included that a copy of the Attorney General's letter of advice on this matter be provided to the city council; and

WHEREAS, the Attorney General's letter of advice is attached;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the communication from the Des Moines Human Rights Commission and the Attorney General's letter be received, filed and referred to the legal department for appropriate action.

receive, file and refer to the Legal Department. Moved by \_\_\_\_\_ to

APPROVED AS TO FORM:

\_\_\_\_\_  
Douglas P. Philip, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk



**RECEIVED**  
AUG 23 2011  
CITY MANAGER'S OFFICE

Commissioners

Stuart Juarez, D. Min, Chair  
David Drake, DO, Vice Chair  
Som Baccam, Secretary  
James Bowman, Ed. D  
Michael Bowser  
Chad Little  
Andrew Tice

Staff

Rudolph Simms, Jr. Director  
Vern M. Ostrander, Sr. HRS  
Mikel J. Johnson, M.S., HRS

Address

602 Robert D. Ray Drive  
Des Moines, Iowa 50309  
Ph: 515-283-4284  
Fax: 515-237-1408  
E-mail:  
rusimms@dmgov.org

August 23, 2011

Dear Mayor and Council Members,

At the August 11<sup>th</sup> Human Rights Commission meeting the Commissioners passed a recommendation to the City Council to add gender identity to the protected classes in the City Ordinance. This action will put the City of Des Moines in alignment with the Iowa Civil Rights Act. The State has had gender identity as a protected class since 2006.

A letter from the Iowa Attorney General at the time firmly stated that cities should pass their own amendment to include gender identity in their jurisdiction. A letter referencing this is attached.

The wording that the Commission approved 4-1 is from the August 11<sup>th</sup> Minutes:

Bowser moved that, "we (Human Rights Commission) request the city council amend the city of Des Moines Human Rights ordinance to be in compliance with Chapter 216 of the Code of Iowa by adding gender identity as a protected class. I further move that we file a copy of the Attorney General's opinion on this matter to the city council." Commissioner Som Baccam seconds the motion. Motion passed 4-1".

On behalf of the Des Moines Human Rights Commission, I thank you for your consideration of this request as it is in keeping compliant with the Iowa State Law and it is just as exemplary to our being an "All American City".

Sincerely,

  
Rudy Simms

54



THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

ADDRESS REPLY TO:  
HOOVER BUILDING  
DES MOINES, IOWA 50319  
TELEPHONE: 515/281-5164  
FACSIMILE: 515/281-4209

October 24, 2007

Mr. Ralph Rosenberg, Executive Director  
Iowa Civil Rights Commission  
Grimes State Office Building  
400 E. 14th Street  
Des Moines, Iowa 50319-1004

Dear Executive Director Rosenberg:

Our office is in receipt of your request for an opinion of the Attorney General concerning the enforcement of civil rights statutes following enactment of Senate File 427. Senate File 427 amended Iowa Code Chapter 216 to extend civil rights protections to persons based on sexual orientation and gender identity. The amendments to Chapter 216 became effective on July 1, 2007. See Iowa Code § 3.7(1) (2007). You state that several municipalities already extend civil rights protections to persons based on sexual orientation and gender identity. You also state that the Iowa Civil Rights Commission contracts with some local commissions to assist in the processing of discrimination complaints. In light of the recent amendments to Chapter 216, you ask whether local human and civil rights commissions can enforce the new civil rights protections based on sexual orientation and gender identity without amending local ordinances, or whether local human and civil rights commissions should amend local ordinances to bring local laws into compliance with the state statutes. Because we believe your questions can be answered based on existing statutes and case law, we are responding by this letter of informal advice.

### *Amendments to Iowa Code Chapter 216*

Senate File 427 amended Chapter 216 to add sexual orientation and gender identity to statutes that address discrimination in many different contexts. In employment, sexual orientation and gender identity are prohibited grounds to refuse to hire, refer, discharge or otherwise discriminate in employment; or to refuse to admit to membership or otherwise discriminating in membership privileges, rights, or benefits; or to advertise or in any other manner indicate or publicize that individuals . . . are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of

the occupation. Iowa Code § 216.6(1)(a)-(c) (2007), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., § 3 (Iowa 2007). These provisions do not apply to any bona fide religious institution or its educational facility, association, corporation, or society, but only if sexual orientation or gender identity are related to a bona fide religious purpose. Iowa Code § 216.6(6)(d), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., § 4 (Iowa 2007). Religious institutions have similar exceptions from the anti-discrimination laws in public accommodations and housing. Iowa Code §§ 216.7(2)(a), 216.12(1), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., §§ 6, 14 (Iowa 2007).

Senate File 427 amended statutes in Chapter 216 governing discrimination in public accommodations. When providing a public accommodation, sexual orientation and gender identity cannot be used to refuse, deny or otherwise discriminate in furnishing accommodations, advantages, facilities, services, or privileges. Iowa Code § 216.7(1)(a) (2007), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., § 5 (Iowa 2007). When advertising or publicizing a public accommodation, sexual orientation and gender identity cannot be used as a ground on which patronage is unwelcome, objectionable, not acceptable or not solicited. Iowa Code § 216.7(1)(b) (2007), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., § 5 (Iowa 2007).

Senate File 427 also amended statutes in Chapter 216 governing discrimination in housing. Sexual orientation and gender identity cannot be grounds to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or to discriminate in the terms, conditions, or privileges of the transaction or in the provision of services or facilities in connection with the real property or housing accommodation. Additionally, when advertising or in any other manner indicating or publicizing these transactions, sexual orientation and gender identity cannot be grounds on which persons are unwelcome, objectionable, not acceptable, or not solicited. Similarly, discrimination on these grounds is prohibited because persons “may from time to time be present in or on the . . . premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives, or in any similar capacity.” Iowa Code § 216.8(1)-(4) (2007), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., § 7 (Iowa 2007). Additional prohibitions extend to representations in real estate transactions. Iowa Code § 216.8A(1)-(5) (2007), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., § 8-10 (Iowa 2007).

Finally, Senate File 427 extends these prohibitions to educational institutions and persons engaged in certain credit practices. Iowa Code § 216.9-10 (2007), as amended by Senate File 427, 82<sup>nd</sup> G.A. 1<sup>st</sup> Sess., §§ 11-13 (Iowa 2007).

*Local Laws and Ordinances*

The extensive amendments to the state statutes impact the local enforcement of civil rights laws. Chapter 216 expressly contemplates local enforcement of the Iowa civil rights statutes. Section 216.19 states:

Nothing in this chapter shall be construed as indicating an intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws not inconsistent with this chapter that deal with the same subject matter.

Further:

Nothing in this chapter shall be construed as indicating an intent to prohibit an agency or commission of local government having as its purpose the investigation and resolution of violations of this chapter from developing procedures and remedies necessary to insure the protection of rights secured by this chapter. *All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa civil rights Act.* Nothing in this chapter shall be construed as limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices.

Iowa Code § 216.19 (2007) (emphasis added).

This statutory language makes clear that Iowa Code Chapter 216 does not preempt a “city or local government” from enacting local laws or ordinances that prohibit unfair or discriminatory practices. 1982 Op. Atty. Gen. 88 (“A city is within its authority to enact a local ordinance which expands the protections granted its citizens under the state statute, as long as the ordinance is not irreconcilable with either the procedural mechanism or substantive rights provided by Chapter 601A”). See Goodell v. Humboldt County, 575 N.W.2d 486 (Iowa 1998). Compare Worth County Friends of Agriculture v. Worth County, 688 N.W.2d 257 (Iowa 2004).

If local laws or ordinances are enacted, Chapter 216 directs that “[a]ll cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa

civil rights Act.” Consistent with the language of section 216.19, local laws or ordinances may prohibit discrimination on additional grounds that are “broader” or “different” from Chapter 216, but “shall . . . protect the rights of the citizens of this state” that are “secured” by Chapter 216. Ordinarily, the use of the term “shall” indicates a mandatory intent. State v. Lockett, 387 N.W.2d 298 (Iowa 1986). This statutory language directs cities that enact ordinances to protect the rights of citizens to the extent of the protections now afforded by Chapter 216. Cities that enact ordinances, therefore, may protect citizens on additional grounds that are “broader” or “different” from those in Chapter 216, but they must protect citizens on the grounds that are contained in Chapter 216.

Generally, “[w]hen the text of a statute is plain and its meaning clear” courts “apply the language of the statute as written and will not search for meaning beyond express terms of the statute or resort to rules of statutory construction.” University of Iowa Hospitals and Clinics v. Waters, 705 N.W.2d 507 (Iowa App. 2005). Applying this principle, with the enactment of Senate File 427 the rights of citizens of this state secured by the Iowa Civil Rights Act plainly expanded to include sexual orientation and gender identity. Accordingly, Chapter 216 now directs cities to protect the rights of the citizens of this state based on sexual orientation and gender identity.<sup>1</sup>

#### *Local Enforcement of Chapter 216*

Cities have enforcement options when protecting the rights of citizens. The Iowa Supreme Court has recognized the power of a local human rights commission to enforce Chapter 216 directly. In Gray v. Kinseth Corp., 636 N.W.2d 100 (Iowa 2001), the Court considered whether a right-to-sue letter issued by the Iowa Civil Rights Commission controlled in calculating the 90-day period within which a former employee was required to commence legal action. Both the state and local commission had issued right-to-sue letters approximately one month apart. The 90-day period after issuance of the *local letter* had expired before suit was filed; however, the 90-day period after issuance of the *state letter* had not expired before suit was filed. Relying on language in section 216.19,

---

<sup>1</sup> The failure to conform local ordinances to the state statute may have additional consequences. The Iowa Civil Rights Commission is authorized to designate an unfunded local agency or commission as a “referral agency.” A local agency or commission *shall not* be designated a referral agency unless the ordinance creating it “provides the same rights and remedies” as provided in Chapter 216. Iowa Code § 216.19 (2007).

Mr. Ralph Rosenberg, Executive Director  
Iowa Civil Rights Commission  
Page 5

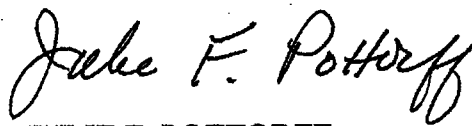
the Court observed that “local commissions have jurisdiction to enforce the Iowa Civil Rights Act as well as local ordinances.” *Id.* at 102-03. Although this case focuses on procedural confusion over the processing of a complaint at the state and local level, it seems clear the Court considered the local commission to be authorized to enforce Chapter 216 directly. See, generally, Van Meter Industrial v. Mason City Human Rights Comm’n., 675 N.W.2d 503, 516 (Iowa 2004) (“[T]he Commission in this case acted under the authority and subject to the limitations of chapter 216. . .”).

*Conclusions*

The authorization for local governments to enact local laws and ordinances and the statutory directive to “protect the rights of the citizens of this state secured by the Iowa civil rights Act” make clear that cities should amend existing ordinances to reflect the recent legislative amendments to Chapter 216. We find nothing in Chapter 216 that suggests cities may ignore these statutory amendments and maintain local laws and ordinances that provide less protection to their citizens than the protection that is now extended under state law. Relying on the Kinseth decision, cities may opt to enforce the state civil rights statutes directly. Direct enforcement of Chapter 216 does not relieve cities of the obligation to conform ordinances to the civil rights protections now extended to the citizens of Iowa under state law.

I hope our advice is helpful to you and to the Iowa Civil Rights Commission as you work with local governments to protect the civil rights of the citizens of Iowa.

Sincerely,



JULIE F. POTTORFF  
Deputy Attorney General