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MUNICIPAL FAIR EMPLOYMENT ORDINANCES AS A VALID
EXERCISE OF THE POLICE POWER

At least thirty cities have passed fair employment ordinances within the past few years.¹ Many more have recently enacted fair housing or other anti-discrimination laws. Twenty states have fair employment acts,² but only Pennsylvania has specifically provided by law that the municipalities of the state are empowered to regulate discrimination in employment locally. Two hurdles presently face the legislation-minded city: first, absence of a clear source of power justifying the enactment of a municipal ordinance; second, pre-emption of the field by the state where some action has been taken on the state level.³

A city adopts an ordinance by means of its police power. A governing body has the authority by its police power to establish social order, to protect health, safety, and morals, and to secure and promote the convenience, economy, and comfort of the people.⁴ To meet changing conditions the power is flexible; it is not confined by narrow limits of precedents based on conditions of a past era.⁵ In recent years the notion of the "general welfare" has been extended to encompass economic elements.⁶ Much civil rights legislation could not be included within the concept of the police power without this extension. The common law recognizes that cities possess an inherent police power.⁷ That is, some powers are incident to every corporation, and do not come from the state. According to Blackstone these include: the power to have perpetual succession, to sue and be sued, to purchase lands and hold them, to have a common seal, and to make by-laws.⁸ The advocates of this common law view hold up the Magna Charta as a reservation by the people of the traditional liberties and customs of the cities.⁹ This right to local self-government is said to have been brought to America and to have been adopted by the people here as part of their unwritten constitutions. Since the cities of the colonies were created prior to the states, some cases hold that absent a grant to the state of the colonial city power, the cities retain their

1 Campbell, Ohio
Chicago, Ill.
Cleveland, Ohio
Duluth, Minn.
East Chicago, Ind.
Eric, Pa.
Farrell, Pa.
Gary, Ind.
Girard, Ohio
Hamtramck, Mich.

Hubbard, Ohio
Lorain, Ohio
Lowellville, Ohio
Milwaukee, Wis.
Minneapolis, Minn.
Monessen, Pa.
Niles, Ohio
Philadelphia, Pa.
Pittsburgh, Pa.
Pontiac, Mich.

River Rouge, Mich.
St. Paul, Minn.
San Francisco, Calif.
Sharon, Pa.
South Bend, Ind.
Steubenville, Ohio
Struthers, Ohio
Toledo, Ohio
Warren, Ohio
Youngstown, Ohio

2 ALASKA COMP. LAWS ANN. §§ 43-5-1 to 43-5-10 (Supp. 1958); CAL. LAB. CODE §§ 1410-32 (Supp. 1963); COLO. REV. STAT. ANN. §§ 81-19-1 to 81-19-8 (1953); CONN. GEN. STAT. REV. §§ 31-122 to 129 (1958), as amended, §§ 31-126, 128-9 (Supp. 1963); DEL. CODE ANN. tit. 19, §§ 710-13 (Supp. 1962); ILL. ANN. STAT. ch 48, §§ 851-66 (Smith-Hurd Supp. 1963); IND. ANN. STAT. §§ 40-2307 to 2317 (Supp. 1963); KAN. GEN. STAT. ANN. §§ 44-1001 to 1014 (Supp. 1961); MASS. ANN. LAWS ch. 151B, §§ 1-10 (Supp. 1963); MICH. STAT. ANN. §§ 17.458 (1)-(11)(1960); MINN. STAT. ANN. §§ 363.01 to .13 (Supp. 1963); N.J. STAT. ANN. §§ 18:25-12 to 18:25-28 (Supp. 1963); N.M. STAT. ANN. §§ 59-4-1 to 59-4-14 (1953); N.Y. EXECUTIVE LAWS §§ 290-301 (Supp. 1963); OHIO REV. CODE ANN. §§ 4112.01-99 (Page Supp. 1963); ORE. REV. STAT. §§ 659.010 to 659.115 (Supp. 1963); PA. STAT. ANN. tit. 43, §§ 951-63 (Supp. 1963); R.I. GEN. LAWS ANN. §§ 28-5-1 to 28-5-39 (1956), as amended, § 28-5-11 (Supp. 1963); WASH. REV. CODE §§ 49.60.010 to 49.60.320 (1961); WIS. STAT. ANN. §§ 111.31-7 (Supp. 1964).

3 Note that all the cities listed in note 1, *supra*, are in states having legislation on fair employment.

4 6 McQUILLIN, MUNICIPAL CORPORATIONS §§ 24.01 to 24.04 (3d ed. 1949).

5 *Id.*, § 24.08.

6 *Id.*, § 24.13.

7 See, e.g., *People v. Hurlbut*, 24 Mich. 44 (1871).

8 2 McQUILLIN, MUNICIPAL CORPORATIONS § 10.11 (3d ed. 1949).

9 Note, *The Right to Local Self-Government*, 13 HARV. L. REV. 441, 447 (1900).

status as a reservoir of the powers which were left with the people by the constitution.¹⁰ Under this theory the right to local self-government is not lost simply because it was not reserved in a written constitution. Clearly, if delegation of power from the state is not necessary to the validity of an ordinance, the anti-discrimination ordinances of municipalities are enforceable, and only questionable to the extent that they are not within the general concept of police power.

The courts no longer adhere to the common law doctrine of inherent powers. The most recent opinions embracing the above theories were written in the nineteenth century. Current decisions universally recite that the municipal corporation receives all of its legislative power from the state.¹¹ The state may *expressly* confer power on the city in its special charter, by specific enumeration of powers in the general laws under which the municipality obtains its charter, or by a home-rule constitutional amendment. Further, it is beyond dispute that municipal corporations have implied or incidental powers in addition to those expressly enumerated.¹² These are derived both from the ever-present "general welfare" clause in grants of municipal power, and from the notion that a city must have the power to enact ordinances which are necessary and proper to the exercise of expressly given powers.

Such implied powers include, and are generally held to be limited to, the following: (1) Powers necessarily arising from those expressly granted, and also those reasonably inferred from the powers expressly granted. (2) Powers essential to give effect to powers expressly granted. (3) Powers recognized as indispensable to local civil government to enable the municipality to fulfill the objects and purposes for which it was organized and brought into existence.¹³

It is well to note in passing that, as a general rule, the courts are more likely to invalidate as unreasonable those ordinances passed by the authority of an implied or incidental grant than those passed pursuant to a specific grant of power from the state.¹⁴

The general welfare clauses of cities without home-rule charters are customarily construed strictly, to limit the cities' power. On the other hand, there has been a tendency to construe general welfare clauses more liberally in the home-rule states, the home-rule city deriving its powers from the state constitution.¹⁵ Cities operating under a home-rule charter may pass an ordinance as broad as any which the legislature may enact.¹⁶ In his treatise on municipal corporations, McQuillin explains that there is a split of authority on the construction of welfare clauses. Some forums agree with the liberal interpretation for both home-rule and non-home-rule cities; other courts maintain that in wide grants to non-home-rule cities the enumerated powers limit the general grants; still others hold that regardless of the means of delegation, the broad power to legislate for the general welfare is limited to measures in furtherance of the other powers which are specifically enumerated.¹⁷ Even though the power to enact a certain kind of ordinance is unspecified in the state grant, and would not ordinarily come within the broad power to legislate for the general welfare, the city's power might be found in a

10 See *State v. Denny*, 118 Ind. 449, 457 (1888); *People v. Hurlbut*, 24 Mich. 44 (1871).

11 2 McQUILLIN, *MUNICIPAL CORPORATIONS* § 10.09 (3d ed. 1949).

12 *E.g.*, *City of Crawfordsville v. Braden*, 130 Ind. 149, 28 N.E. 849 (1891); *Village of Carthage v. Frederick*, 122 N.Y. 268, 25 N.E. 480 (1890).

13 2 McQUILLIN, *MUNICIPAL CORPORATIONS* § 10.12 (3d ed. 1949).

14 *Elson and Schanfield, Local Regulation of Discriminatory Employment Practices*, 56 *YALE L. J.* 431, 446 (1947).

15 Note, 3 *RACE REL. L. REP.* 1085, 1106 (1958).

16 See, *e.g.*, *City of Duluth v. Cerveny*, 218 Minn. 511, 16 N.W.2d 779, 783 (1944); *City of Seattle v. Rogers*, 6 Wash.2d 31, 106 P.2d 598 (1940); *Saxton v. City of Peoria*, 75 Ill. App. 397, 400 (2d Dist. Ct. App. 1897).

17 6 McQUILLIN, *MUNICIPAL CORPORATIONS*, §§ 24.44-45 (3d ed. 1949); *e.g.*, *City of Bloomington v. Werrick*, 381 Ill. 347, 45 N.E.2d 852 (1942); *Barnard & Miller v. City of Chicago*, 316 Ill. 519, 147 N.E. 384 (1925).

combination of grants.¹⁸ In *Marshall v. Kansas City*,¹⁹ the Supreme Court of Missouri held that the municipality could prohibit discrimination in restaurants. The authorization by charter to regulate restaurants and the city's charter power to prohibit anything detrimental to the health, safety, and welfare of city inhabitants were utilized as a source of city police power.

It is well settled that prohibitions against racial discrimination are within the concepts of the police power in some areas of legislation. The states have successfully enacted statutes which, (1) forbid discrimination for reasons of race, color, or previous condition of servitude, and, (2) secure to all citizens equal rights and privileges in places where the public generally are served, entertained, educated, or accommodated.²⁰ These "civil rights" statutes are not violative of due process and are a proper exercise of the police power when applicable to public facilities.²¹ Reasoning that private property rights are subject to the exercise of the police power, state courts have upheld fair housing statutes.²² The regulation is related to the health, safety, morals, and welfare of the people in that, (1) discrimination in multiple dwellings and contiguously located housing might tend to restrict Negroes to a relatively small area and perhaps encourage slum conditions through density of population, (2) discrimination could impede relocation of urban redevelopment programs, and (3) Negroes suffering from discrimination would not fare as well as other groups in the event of a housing shortage.²³ The law in this area is not uniform: In *New York State Commission v. Pelham Hall Apts.*,²⁴ a New York appellate court found nothing objectionable in the state fair housing law which was restricted in application to publicly assisted housing. In distinguishing the *Pelham* case, a Washington court has held that state's fair housing law unconstitutional on the grounds that the Washington statute is applicable to housing which received public assistance before the act was passed. The restriction to publicly assisted housing in Washington is improper classification amounting to discriminatory legislation because, as the court said:

There is no reason to suppose that persons with FHA mortgages on their homes are more likely to discriminate against minority groups than those who have conventional mortgages or no contract. This act would prohibit . . . [plaintiff with an FHA mortgage] from doing what his neighbors are at perfect liberty to do.²⁵

In *West Coast Hotel Co. v. Parrish*,²⁶ the Supreme Court decided that state legislatures have wide discretion in the field of employer-employee relations so that there may be suitable protection of the health and safety, and so that good order may be promoted. Carrying this principle into the civil rights field, the Supreme Court upheld the New York fair employment practice statute in *Railway Mail Ass'n v. Corsi*.²⁷ The Court held that the statute prohibiting racial discrimination by labor organizations was not an interference with the union's right to selection of membership and not an abridgment of freedom of contract.

18 See *People v. Wolper*, 350 Ill. 461, 183 N.E. 451 (1932) (dictum).

19 355 S.W.2d 877 (Mo. 1962).

20 E.g., CAL. CIV. CODE §§ 51-52 (Supp. 1963).

21 See, e.g., *Burks v. Poppy Construction Co.*, 20 Cal. 609, 370 P.2d 313 (1962); *Pickette v. Kuchan*, 323 Ill. 138, 153 N.E. 667 (1926); *People v. King*, 110 N.Y. 418, 18 N.E. 245 (1888).

22 See, *Massachusetts Comm'n Against Discrimination v. Colangelo*, 344 Mass. 387, 182 N.E.2d 595 (1962); *New York State Comm'n v. Pelham Hall Apts.*, 170 N.Y.S.2d 750 (Sup. Ct. 1958).

23 *Massachusetts Comm'n Against Discrimination v. Colangelo*, *supra* note 22, at 599-600.

24 170 N.Y.S.2d 750 (Sup. Ct. 1958).

25 *O'Meara v. Washington State Board Against Discrimination*, 4 RACE REL. L. REP. 664, 688 (Super. Ct. 1959), *aff'd*, 356 P.2d 1 (Wash. 1961).

26 300 U.S. 379 (1937).

27 326 U.S. 88 (1945).

A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color.²⁸

Since civil rights in general, and fair employment in particular, are within the police power of the state, and since the general welfare clause in the municipality's grant of power is often regarded as investing the municipality with the same legislative powers as the state, a city is probably capable of enacting a fair employment practice ordinance. Several reasons have been set forth for preferring local over state legislation in the civil rights area: (1) Enforcement of state laws has been limited by the reluctance of a jury to convict a local businessman of discriminatory action and the cost to the individual of bringing an action;²⁹ (2) Local legislation is more easily enacted due to the concentrated strength in urban areas of the minority groups affected; (3) Local enforcement tends to be more vigorous and efficient, partly because law enforcement is usually regarded as a local problem; and, (4) Local ordinances can be utilized more effectively as educational devices to make the community aware of its own situation and of legal remedies.³⁰

To bring themselves within the broad grants of power from the state, the cities enacting ordinances have attempted to establish a relation between fair employment practices and the general welfare. The Pittsburgh ordinance,³¹ for instance, makes these findings of fact in its first section: discrimination in employment creates unrest between groups; forces groups into depressed living conditions; creates a breeding ground for crime, vice, and disease to the injury of the public health, safety, and general welfare of the city; reduces its productive capacity; and hampers its progress. Further, cites the ordinance, experience in other cities has shown that fair employment practice legislation has aided in reducing strife, crime, poverty, and disease, and has directly promoted the public welfare.

In the past, cities have been successful in their exercise of the police power to *segregate* the races. Ordinances establishing segregation, while repugnant to the fourteenth amendment by today's standards, were considered valid exercises of the city's police power under clauses empowering cities to legislate for the general welfare.³² According to the reasoning of the Florida Supreme Court,³³ separation is a reasonable precaution against breaches of peace and disturbances of the good order of society because, without it, the close contact of races would breed antagonism and discord. With a consensus of modern thought reversed on what causes discord and what does not, there is good reason to sustain the anti-discrimination ordinance of the twentieth century municipality as sufficiently related to the public peace and order and within the concept of the general welfare. The legislatures of the states have provided for a flexible range of municipal power by the inclusion of broad general welfare clauses in the grants of power; this is precisely the kind of social change which must have been envisioned in writing those broad grants.

There are no cases on the power of cities to legislate on either fair employment or fair housing. There are three on city prohibitions against discrimination in public places. The Supreme Court, in *District of Columbia v. John R. Thompson, Inc.*,³⁴ upheld the conviction of a restaurant proprietor based on a Washington, D.C., ordinance making it a crime to deny service to any well-behaved person

28 *Id.* at 93-94. For a discussion of state fair employment practice acts see note, 36 NOTRE DAME LAWYER 189 (1960-61).

29 Rice and Greenberg, *Municipal Protection of Human Rights*, 1952 WIS. L. REV. 679, 682.

30 Elson and Schanfield, *supra* note 14, at 435.

31 PITTSBURGH, PA., ORDINANCE 465 (1953).

32 *E.g.*, *Boyer v. Garrett*, 183 F.2d 582 (4th Cir. 1950), *cert. denied*, 340 U.S. 912 (1951); *Hopkins v. City of Richmond*, 117 Va. 692, 86 S.E. 139, 142 (Sup. Ct. App. 1915).

33 *Patterson v. Taylor*, 51 Fla. 275, 40 So. 493 (1906).

34 346 U.S. 100 (1953).

for reasons of color. The delegated power of a municipality is as broad as the police power of the parent state, the state can prohibit discrimination, and, therefore, so can the city. A contrary position was adopted by the Supreme Court of Utah in *Nance v. Mayflower Tavern*.³⁵ Damages were denied to a Negro who had been refused admission to defendant's bar in violation of a municipal anti-discrimination ordinance. The court reasoned that cities have no inherent power to enact such legislation. To be valid then, power to enact civil rights measures would have to be expressly granted, necessarily or fairly implied in, or incident to, powers expressly granted, or indispensable to the accomplishment of the corporate purpose; civil rights power is not one of these according to the *Nance* court. However, enactment of a criminal ordinance was termed a proper exercise of the police power by the Supreme Court of Missouri in *Marshall v. Kansas City*.³⁶ In upholding the ordinance's relation to the health, safety, and welfare, the court distinguished the *Nance* case: "We regard the *Nance* case as authority only for the proposition that a municipal corporation absent statute or constitutional authority cannot by ordinance create a cause of action for damages for denial of 'civil rights.'"³⁷

McQuillin states flatly that a municipality cannot create a right of action.³⁸ It may be then, that while cities can effectively declare certain discriminatory conduct a misdemeanor, no remedy can be made available by local law to the person offended. There are inherent evils in forcing minority groups to rely on public prosecution; social and economic pressures on officials may yield enforcement which is unsatisfactory in quantity and quality to the classes supposedly protected. It is submitted that a civil cause of action for violation of a municipal criminal ordinance prohibiting discrimination is possible. Argument for the existence of such a right of action can be made by analogy. First, a civil cause of action for negligence is often successfully predicated upon a violation of a criminal ordinance. Second, while a District of Columbia case³⁹ expressly denies relief for violation of a criminal ordinance on the grounds that a city cannot create a remedy, the case has been criticized as without precedent.⁴⁰ The court in this case conceded that if the violation had been of a state criminal statute relief would be available; there appears to be no authority for the distinction between ordinances and state statutes. In the absence of contrary implications, a criminal statute, enacted for the protection of a certain class of persons, creates a civil remedy in members of the class.⁴¹ Courts have the common law power to redress wrong of any kind; they should do so when there is no good reason for restraint.

Municipalities have easily justified regulation of employment as within the exercise of their police power.⁴² Although freedom of contract is protected against excessive interference from either state or city, the employer-employee relationship is subject to reasonable police regulation where the measure is related to the public health, safety, morals, or welfare. Municipal restrictions on working hours have been sustained,⁴³ for example. Few writers doubt that municipalities can apply anti-discrimination regulations to hiring by the city itself.⁴⁴ Likewise, there is not much question about the ability of the city to specify that those applying for city contracts follow fair employment practices.⁴⁵ Home-rule cities have powers as broad

35 106 Utah 517, 150 P.2d 773 (1944).

36 355 S.W.2d 877 (Mo. 1962).

37 *Marshall v. Kansas City*, *supra* note 36, at 883.

38 6 McQUILLIN, MUNICIPAL CORPORATIONS § 22.01 (3d ed. 1949).

39 *Tynes v. Gogos*, 144 A.2d 412 (Munic. Ct. App. for D.C. 1958).

40 8 CATHOLIC U.L. REV. 45, 46 (1959).

41 See *Fitzgerald v. Pan American World Airways*, 229 F.2d 499 (2d Cir. 1956); *General Teleradio, Inc., v. Manuti*, 284 App. Div. 400, 131 N.Y.S.2d 365 (App. Div. 1954).

42 See, 7 McQUILLIN, MUNICIPAL CORPORATIONS § 24.431 (3d ed. 1949).

43 *E.g.*, *City of St. Paul v. Fielding & Shepley, Inc.*, 155 Minn. 471, 194 N.W. 18 (1923); *City of Milwaukee v. Raulf*, 164 Wis. 172, 159 N.W. 819 (1916).

44 See *Elson and Schanfield*, *supra* note 14, at 438-9.

45 *Id.* at 440-41.

as that of the state to fix the terms and conditions upon which they will conduct business and make contracts. The only problem in an anti-discrimination requirement is that it may be in violation of state statutes which stipulate that public contractors must be chosen by competitive bidding, and the cities may not make any requirement which would restrict competitive bidding. There being no case law, the questions so raised are undecided. It further remains to be seen whether dictates by a city to a wholly private employer are reasonable exercises of the police power.

If the municipality definitely has the initial power to enact fair employment practice legislation, the ordinance may yet be invalid under the state constitution because it is unreasonable, discriminatory, or pre-empted by state law. Ordinarily ordinances are presumed valid in all respects.⁴⁶ By prohibiting discrimination without defining just what is meant by discrimination, however, drafters of ordinances become guilty of vagueness. An invalid grant of legislative power to a fair employment practice commission, or to the courts, can be avoided by a carefully drawn definition specifying certain types of conduct as constituting discrimination.⁴⁷

Every such ordinance provides for exceptions. That is, the ordinance shall not be applicable to some employers: persons whose employees are in domestic service at the employer's home, employers of fewer than a certain number of employees, religious organizations, or fraternal organizations. The Pittsburgh ordinance⁴⁸ exempts from its prohibitions occupations or positions which the commission certifies as reasonably requiring employment of a particular race, color, or religion. One critic feels that the exemption seriously weakens the fabric of the whole enactment:

Most likely the framers of the provision intend it to apply to special situations, *e.g.*, a Chinese restaurant, or a religious goods store. Though the wording could admit of other constructions, *e.g.*, that an employer might be certified on a showing that failure to use employees of a certain race has caused him a serious loss in clientele, such a construction would destroy the efficacy of the entire ordinance.⁴⁹

Drafters must beware of emasculating their work by the inclusion of exemptions.

An ordinance in conflict with a state law must fail.⁵⁰ The conflict must be with a specific state statute, as distinguished from the common law of the state.⁵¹ If conflict with common law were grounds for invalidation, the city could legislate only where the common law would concur—in these areas no legislation would be necessary. The field of fair employment may present an exception to the general rule that an ordinance is void when it is in conflict with a state statute. A state law at variance with an ordinance providing for fair employment practices would likely be repugnant to the fourteenth amendment, and the municipal ordinance would prevail for that reason. In matters of state-wide, rather than local, interest the city is usually regarded as having concurrent powers of legislation with those of the state, at least until the state has legislated on the subject.⁵² Until the state acts then, a municipal regulation of fair employment practices will not be invalidated simply because this is a matter on which the state should act. Where the state has passed some legislation on a subject, there is a split of authority as to the effect on municipal ordinances. On the one side, state fair employment acts are

46 6 McQUILLIN, MUNICIPAL CORPORATIONS § 20.06 (3d. ed. 1949).

47 Elson and Schanfield, *supra* note 14, at 450.

48 PITTSBURGH, PA., ORDINANCE 465 (1953).

49 Note, *The New Pittsburgh Fair Employment Practices Ordinance*, 14 U. PITT. L. REV. 604, 605, n.5 (1953).

50 *E.g.*, Parrack v. City of Phoenix, 84 Ariz. 382, 329 P.2d 1103 (1958); Brady v. City of Detroit, 353 Mich. 243, 91 N.W.2d 257 (1958).

51 Chavez v. Sargent, 329 P.2d 579, 583 (Dist. Ct. App. 1958), *aff'd*, 52 Cal.2d 162, 339 P.2d 801 (1959).

52 Opinion of the City Attorney of San Francisco, 2 RACE REL. L. REP. 750, 751 (1957).

said to preclude any action by the municipalities: "[I]nasmuch as the state has asserted its direct power over the field of civil rights in employment . . . municipal ordinances covering the same field in competition and conflict with the state statute . . . must be regarded as superseded and inoperative."⁵³ Opposing this narrow view, others think that the intent of the state legislature governs pre-emption.⁵⁴ That is, if the state legislature intended to occupy the entire field of fair employment a municipal ordinance would be invalid; a city may not act at all in an area which state law has fully occupied.⁵⁵ On the other hand, if the state legislation was not intended to cover the entire field, a local ordinance supplementary to the state statutes is valid. The prevailing view is that legislative silence on intent to pre-empt the field is not tantamount to saying the field is occupied to the exclusion of municipal enactments.⁵⁶ If silence were equated with pre-emption, desirable gap-filling city action would be blocked by the state's failure to act. There is some case law to the effect that though the field is occupied by the state, the municipal ordinance is valid so long as it is consistent with the state law and preserves the standard of regulation as molded by the state.⁵⁷ Antieau, writing on municipal corporations,⁵⁸ declares that the "occupation of the field" doctrine should be discarded. The legislatures of the states, he says, can easily indicate their intent that municipalities shall not legislate on the subject of state attention. If they choose not to do so, the courts should not indulge in a fictional inquisition into intent; this affords too ready an opportunity for validating those ordinances with which the court is sympathetic, and condemning those with which it is not. Since it is impossible beforehand to know how the court will rule on occupation of the field, the doctrine is unserviceable to the bar.

The notion of police power embraces legislation which prohibits discrimination in employment. The ends sought by fair employment ordinances are related to the general welfare and convenience of the public, and with a liberal construction of the state's authorization to legislate for the general welfare, courts should decide that cities have implied power to enact such ordinances. While attempts to create a civil right of action would probably be futile, the municipality would do well to enact criminal ordinances to secure the advantages of local legislation and enforcement. Anti-discrimination laws are readily made to conform to the state constitution. Even as a regulation of a matter of state-wide interest, ordinances will not be considered invalid as a duplication of state law unless the state legislature has indicated that it intends to occupy the field.

John P. McQuillan

⁵³ 2 REP. ATT'Y GEN. MICH. 150, 153 (1958), also reported at 3 RACE REL. L. REP. 801 (1958).

⁵⁴ *E.g.*, Opinion of the City Attorney of San Francisco, 2 RACE REL. L. REP. 750, 751 (1957).

⁵⁵ *E.g.*, *S.H. Kress & Co. v. Department of Health of City of New York*, 283 N.Y. 55, 27 N.E.2d 431, 432 (1940).

⁵⁶ See *Chavez v. Sargent*, 329 P.2d 579 (Dist. Ct. App. 1958), *aff'd*, 52 Cal.2d 162, 339 P.2d 801 (1959).

⁵⁷ See *City of Duluth v. Evans*, 158 Minn. 450, 197 N.W. 737 (1924).

⁵⁸ 1 ANTIEAU, MUNICIPAL CORPORATION LAW § 5.22 (1955).

ERRATA

The *Lawyer* expresses deep regret that a student note on "The Taxability of Scholarships and Fellowship Grants," appearing in our April, 1964 issue, drew upon copyrighted materials without adequate credit to the author.