

## Attorney General Opines That Civil Rights Commission Exceeded Its Jurisdiction by Issuing Interpretive Statement

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July 23, 2018

As previously reported by Miller Canfield, the Michigan Civil Rights Commission voted on May 21, 2018, to expand its interpretation of the Michigan Elliott-Larsen Civil Rights Act ("ELCRA") to prohibit discrimination based on sexual orientation and gender identity. On July 20, 2018, in response to a request made by State Senator Arlan Meekhof and State Representative Tom Leonard, Michigan Attorney General Bill Schuette issued Attorney General Opinion #7305, concluding that the Civil Rights Commission's interpretation exceeded its authority.

The Opinion starts by looking at the plain language of the ELCRA. The word "sex" is not defined in the statute, so the Opinion looked at dictionary definitions from the time the act was passed in 1976. Those definitions of the word sex did not encompass sexual orientation or gender identity. Therefore, the Opinion concluded that the intent at the time the statute was passed was not to prohibit discrimination based on sexual orientation or gender identity.

The Opinion also relied on the 1993 Michigan Court of Appeals decision in *Barbour v Department of Social Services*, which held that the ELCRA did not prohibit discrimination based on sexual orientation.

The Opinion concluded by finding that the plain language of the ELCRA and its interpretation by Michigan courts rendered the Civil Rights Commission's interpretation invalid. The Opinion states that it is up to the Legislature to change the definition of the Act if it sees fit to do so and that the Civil Rights Commission exceeded its authority in attempting to change the definition of "sex" through the interpretive statement.

The Attorney General opinion is binding on the Civil Rights Commission unless overturned by court action. The Civil Rights Commission is currently reviewing the opinion and determining how to proceed. We will keep you updated on any further developments.