



June 24, 1969

OPINION LETTER NO. 199

Honorable Herman Julien
Director
Division of Employment Security
Department of Labor and Industrial Relations
P. O. Box 59
Jefferson City, Missouri 65101

Dear Mr. Julien:

Reference is made to your request which request reads in part as follows:

Question "Does Section 296.020, RSMo Supp. 1967, preclude this Division
No. 1 from recording information pertaining to race, sex, color or
national origin on applications and/or other forms to be
used for non-discriminatory purposes?"

Question "Is said statute in conflict with the recording requirements
No. 2a-e of Title VII of the Civil Rights Act of 1964 (2000d et. seq.)
the Wagner-Peyser Act (29 U.S.C.A. 49K) and the Social
Security Act (42 U.S.C.A. Sec. 301 et. seq.), and the Regu-
lations of the Secretary of Labor, and if so, is it encum-
bered upon this Director to comply with the Federal require-
ment to record such information under the principle of
Federal supremacy?"

We deem it unnecessary to determine whether the provisions of Section 296.020, RSMo Supp. 1967, conflict with federal statutory requirements that the Division of Employment Security record information pertaining to race, sex color or national origin on applications and/or other forms to be used for non-discriminatory purposes.

If there is any conflict between Section 296.020 and the federal statutory requirements, the federal requirements prevail.

Article VI, clause 2 of the Constitution of the United States states in part:

"* * *This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the

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the United States, shall be the supreme Law of the Land. . . ."

The Supreme Court of the United States has long held that any State law which conflicts with the Constitution or laws of the United States is a nullity. Gibbons v. Ogden, 9 Wheat. 1, 210, 211 (1824). Moreover, the Supreme Court has found that where Federal regulations promulgated pursuant to authority conferred by Federal Statute conflict with State laws, the Regulations have the force of law and have supremacy over the State Statute. Public Utilities Commission v. United States, 355 U.S. 534, 542-545 (1958)

The Supreme Court has considered statistical data to be relevant to the determination of whether unlawful employment practices have been or are being committed. Cassell v. Texas, 339 U.S. 282, 284-286 (1950). Therefore, the regulation by the Commission that statistical data be recorded and reported is both valid and supreme over conflicting state law.

Therefore, it is the opinion of this office that the Division of Employment Security may record information pertaining to race, sex, color, or national origin on applications and other forms to be used for non-discriminatory statistical purposes.

Yours very truly,

JOHN C. DANFORTH
Attorney General