

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington Street, Suite 3040
Chicago, Illinois 60602

John WICKS, Complainant)	
)	
)	Case No. 2009E038
v.)	
)	
)	Entered: August 11, 2014
COOK COUNTY JUVENILE)	
TEMPORARY DETENTION CENTER,)	
Respondent)	

ORDER

On June 5, 2009, Complainant John Wicks, Sr. (“Wicks”) filed a complaint with the Cook County Commission on Human Rights (“Commission”), alleging that his employer, Respondent Cook County Juvenile Temporary Detention Center (“JTDC”), engaged in unlawful retaliation by subjecting Wicks to discipline in 2009 for certain complaints that he filed with the Commission in 2007. The Commission has not yet made an evidentiary determination with respect to Wicks’ claim because the Commission learned during the course of its investigation that this matter is outside of its jurisdiction under the Cook County Human Rights Ordinance (“Human Rights Ordinance”).

The JTDC, though ostensibly a County facility, is being run on a temporary basis (going on seven years) by the federal government. As part of the pending lawsuit, *Doe v. Cook County*, No. 99 C 3945 (N.D. Ill.), Cook County entered into an agreement on August 14, 2007, by which United States District Court Judge John A. Nordberg appointed a Transitional Administrator with the authority “[t]o oversee, supervise, and *direct all* management, administrative, financial, contractual, *personnel*, security, housing, custodial, purchasing, maintenance, technology, health services, mental health services, food and laundry service, recreational, educational and programmatic functions relating to the operation of the JTDC[.]” Order, No. 99 C 3945 at ¶ 5.b (Aug. 14, 2007) (emphasis supplied). Per Judge Nordberg’s order, the Transitional Administrator at the JTDC is an agent of the federal – not County – government. *Id.* at ¶ 2 (“The TA shall be an agent of this Court[.]”).

As such, the Commission has opined that the JTDC is beyond the reach of the Human Rights Ordinance with respect to unlawful discrimination claims. *See, e.g., Ash v. Cook County Juvenile Temporary Detention Center*, 2008E048 (Aug. 4, 2014). Employment discrimination turns on the respondent’s status as an “employer,” and the federal government is specifically excluded from this definition in the local law. *See* Cook County Code of Ordinances (“County Code”), §§ 42-35(b)(1) (prohibiting an “employer” from “directly or indirectly discriminat[ing] against any individual in . . . [any] term, privilege, or condition of employment on the basis of unlawful discrimination.”); 42-31 (defining “employer”).

The prohibition against unlawful retaliation in the Human Rights Ordinance applies to a broader category of respondents than just employers. *See id.* at § 42-41(a) (“No *person* shall retaliate . . .”) (emphasis supplied). But it would be contrary to the intent of the County Board of Commissioners for the Human Rights Ordinance to carve the federal government out of the Commission’s jurisdiction for the purpose of unlawful discrimination claims while preserving the Commission’s jurisdiction over retaliation claims that arise from complaints about this underlying discrimination. The anti-retaliation protection contained in the Human Rights Ordinance is not an end unto itself. As this Commission opined in *Washington v. Cook County*, “[t]he anti-retaliation provision of the Human Rights Ordinance seeks to protect unfettered access to the Commission by prohibiting employers from taking any action that would dissuade a reasonable employee from reporting *discrimination* to the Commission.” 2005E65, *6 (CCHRC Sept. 26, 2013) (emphasis supplied).

It is a well-established canon of constitutional law that in many instances local governments cannot apply their laws to federal actors. The U.S. Supreme Court noted, for instance, that it “is the very essence of supremacy to remove all obstacles to [the federal government’s] action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence.” *Hancock v. Train*, 426 U.S. 167, 178-79 (1976) (internal citations and quotation marks omitted). The default rule then is that “where Congress does not affirmatively declare its instrumentalities or property subject to regulation . . . [by state and local governments,] the federal function must be left free of regulation.” *Id.* at 179 (internal citations and quotation marks omitted).

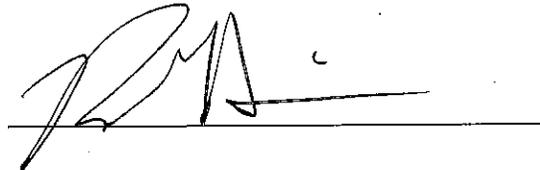
This is not to say that there are not exceptions to this rule in some instances, but regardless of the permissible constitutional scope of non-federal regulations to reach the federal government generally, the language of the Human Rights Ordinance evidences a specific intent to self-limit the reach of the local law by the County Board of Commissioners. To be answerable to a claim of retaliation before this Commission, the respondent must be a “person.” County Code, § 42-41(a). Yet the United States is not listed among the government actors that are included in the ordinance’s definition of a “person.”¹ *See id.* at § 42-31 (“*Person* means . . . *state* governments other than that of Illinois) (emphasis supplied). The most reasonable interpretation is that the drafters of the Human Rights Ordinance did not intend to include the federal government, its actors and entities in the category of persons prohibited from retaliating against Commission complainants.

For the foregoing reasons, the Commission orders that complaint 2009E038 be **DISMISSED** for **LACK OF JURISDICTION**. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date of this order.

¹ Moreover, federal- (and Illinois-) controlled “commercial operations or entities,” are also specifically excluded from this definition. It is implausible that the County Board of Commissioners sought to exempt commercial enterprises controlled by the United States government from the Human Rights Ordinance while asserting jurisdiction over the federal government itself *sub silentio*.

August 11, 2014

By delegation:

A handwritten signature in black ink, appearing to be 'R. Hakim', is written over a horizontal line.

Ranjit Hakim
Executive Director of the Cook Commission
on Human Rights