B. *Provisions of the Law*

The New York "Law Against Discrimination" registers, in Section 125, the Legislature's finding and declaration that discrimination of any kind on the basis of race, creed, color or national origin is "a matter of state concern", and that it "menaces the institutions and foundation of a free democratic state." It creates a state agency "with power to eliminate and prevent discrimination in employment because of race, creed, color or national origin, either by employers, labor organizations, employment agencies or other persons. . . ." Section 126 asserts that the "opportunity to obtain employment without discrimination" is a civil right. In using the word "creed" the legislators meant only religious belief. Assemblyman Ives told the Legislature: ". . . for the sake of the record, in case any court may sometime want to know what the legislative intent is, let's get it straight—*in dealing with the subject today as a Legislature we mean by creed, religious belief and nothing else.*"[13] Senator Quinn made the same point to the Senate.[14]

Section 127 defines the terms used in the statute and excludes the following classes of employers: social and fraternal clubs, and charitable, educational and religious associations not organized for private profit, and establishments with less than six employees. Section 128 creates the State Commission Against Discrimination, composed of five members appointed by the Governor for five-year terms at a salary of ten thousand dollars annually. Section 129 directs SCAD to "formulate policies to effectuate the purposes" of the law and empowers it to make appropriate recommendations to other state agencies and officials.

Section 130 sets forth the "functions, powers and duties" of SCAD: to announce rules for the execution of its task; to "receive, investigate and pass upon" complaints of unlawful discrimination in employment; to "hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question" before it; to create "advisory agencies and conciliation councils" composed of "representative citizens" to study any kind of discrimination and to help achieve the purposes of the statute and the civil rights section of the state Constitution.

Section 131 declares the following types of discrimination, on the ground of race, creed, color or national origin, to be an "unlawful employment practice": an employer's refusal to hire any individual or to discriminate against any one in pay or the terms of employment; a labor union's exclusion of any person, or its discrimination against any of its members or against an employer or any person working for an employer; an employer's or an employment agency's written or oral statement or job application form calling for information from a prospective employee that expresses or shows intent to use any criterion other than "bona fide occupational qualification"; an employer's, labor union's or employment agency's discharge or other discrimination against a person who has opposed these unlawful practices or who has "filed a complaint, testified or assisted in any proceeding" under the statute.

13 N. Y. State Legislature, Debates on Proposed Law Against Discrimination, February 28, 1945, p. 123.

14 *Id.* at 26.

Section 132 prescribes the method for handling complaints. "Any person claiming to be aggrieved" under the act may file a complaint with SCAD. The chairman of SCAD then assigns the case to one of the commissioners, who investigates the matter. If the commissioner finds that "probable cause exists for crediting the allegations of the complaint," he tries to eliminate the unlawful practice by "conference, conciliation and persuasion." "The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors." If these methods fail to accomplish the elimination of the unlawful practice (or before that if the conditions warrant) the commissioner calls for a hearing of the case before three members of SCAD. At this hearing the commissioner who investigated the case may participate only as a witness, and nothing which occurred during the efforts at conciliation may be accepted as evidence. If after the hearing the Commission finds the law has been violated, it states its findings of fact and issues an order to the respondent to cease and desist from the unlawful practice. The respondent may be required to hire, reinstate, upgrade a worker, or to perform any "affirmative action . . . as, in the judgment of the commission, will effectuate the purposes" of the statute.

Section 133 provides for judicial review of an order by SCAD, and SCAD may obtain a court order for the enforcement of its own orders. Section 134 provides a maximum jail sentence of one year and a maximum fine of $500 for any person, employer, labor union or employment agency wilfully impeding the Commission's work or wilfully violating its order.

Before the passage of the law the executive committee of the New York State Bar Association opposed its enactment on the ground that it was an unconstitutional infringement of freedom of contract; it would cause business firms to leave the state; it tried to legislate morality; it could not be enforced and it would actually intensify group hostility and