



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Michael Fordham Dennis
Compliance Director
Human Relations Commission

VIA: Charles W. Thompson, Jr.
County Attorney

Marc Hansen, Chief
Division of General Counsel

FROM: Robert G. Schoshinski
Assistant County Attorney

DATE: June 16, 2000

RE: Discrimination Complaints against the Montgomery County Detention Center

This memorandum deals with your question of whether the Human Relations Commission (HRC) has jurisdiction to accept complaints made by inmates at the Montgomery County Detention Center (MCDC) alleging harassment and discrimination by the MCDC staff. Specifically you asked whether the HRC could take jurisdiction under either the County Code sections dealing with discrimination in public accommodation (Sections 27-8 & 27-9) or the County Code section dealing with discrimination in housing (Section 27-12).

The HRC does not have jurisdiction to accept such a complaint under the public accommodations section because the detention center is not a public accommodation as defined by the section. The HRC does not have jurisdiction to accept such a complaint under the housing discrimination section because the County and the Correction and Rehabilitation Department as an agency of the County are not "persons" as defined by the relevant code section.

I. PUBLIC ACCOMMODATION DISCRIMINATION.

Section 27-8 of the County Code sets forth the applicability of the division barring discrimination in places of public accommodation. It states, in pertinent part: "This division applies to discriminatory practices in places of public accommodation within the territorial limits

of the county, and shall apply and be applicable to every place of public accommodation, resort or amusement of any kind in the county whose facilities, accommodations, services, commodities or use are offered to or enjoyed by the general public either with or without charge . . . ”

Because this definition requires that places of public accommodation be offered to or enjoyed by the general public to be covered by the division, the MCDC does not qualify as a place of public accommodation. The MCDC is not offered to or enjoyed by the general public. Rather, its facilities and services are only used by prisoners and their visitors. The HRC, therefore, does not have jurisdiction to hear complaints of public accommodation discrimination under the County Code by inmates against the MCDC.

Several state courts have reached the same conclusion in interpreting their states’ public accommodation discrimination laws. The Supreme Court of Appeals of West Virginia stated “because members of the general public are excluded, the inmate’s place of confinement cannot be deemed a public accommodation.” Skaff v. West Virginia Human Rights Commission, 444 S.E. 39, 41-42 (W. Va. 1994); accord Blizzard v. Floyd, 613 A.2d 619 (Pa. Commw. Ct.1992) (court found state correctional institution not a public accommodation because “it does not accept or solicit the patronage of the general public.”) The human relations statutes of both West Virginia and Pennsylvania contained definitions of public accommodations that are similar to the one in the County Code.

II. HOUSING DISCRIMINATION.

The HRC does not have jurisdiction to hear inmate complaints against the MCDC alleging housing discrimination because the County and its agencies are not “persons” as defined by the definitions section of the real estate discrimination division of the Code.

County Code Section 27-12 prohibits certain housing practices. The Section prohibits “any person, real estate broker or real estate salesperson” from engaging in certain acts defined as “unlawful housing practices.”

Section 27-11 provides the definitions for certain words and phrases used in Division 2 (Discrimination in Real Estate) of the Human Relations Chapter. It defines “person,” “real estate broker,” and “real estate salesperson” as follows:

(6) Person: One (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

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(9) Real estate broker: Any person duly licensed as a real estate

broker in accordance with the provisions of article 56, Annotated Code of Maryland, 1957.

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(10) Real estate salesperson: Any person duly licensed as a real estate salesman in accordance with the provisions of article 56, Annotated Code of Maryland, 1957.

Because the County and its agency the Correction and Rehabilitation Department are not licensed real estate brokers or salesmen, those definitions clearly do not include the MCDC. The more difficult question is whether the County fits within the definition of person in Section 27-11(6). Of the fourteen categories used in the definition, one could reasonably read only two, "individuals" and "corporations," to potentially encompass the County.

The Court of Appeals has, on several occasions, addressed the question of whether the words "person" and "corporation" include the state and municipal corporations when used in a statute. In City of Baltimore v. Baltimore Gas & Elec. Co., 192 A.2d 87 (Md. 1963), the Court stated that "[t]he State and its creature, a municipal corporation, generally are not included within the class meant by the words person, corporation or body corporate in a statute, although they may be." *Id.* at 93-94; *accord* State Commission on Human Relations v. Mayor and City Council of Baltimore, 371 A.2d 645, 647 (Md. 1977). The Court later held, in Unnamed Physician v. Commission on Medical Discipline, 400 A.2d 396 (Md. 1979), *cert. denied* 444 U.S. 868 (1979), that "the word 'person' in a statute does not include the State, its agencies or subdivisions unless an intention to include these entities is made manifest by the Legislature." *Id.* at 402. Under Maryland law, one interpreting Code Section 27-11(6) must determine whether the County Council intended the definition to include the County and its agencies.

The text of Division 2 of Chapter 27 does not outwardly indicate any intent to include the County and its agencies such as the Correction and Rehabilitation Department under its provisions addressing discrimination in real estate. I have reviewed the legislative history of the Division and have found no evidence that the issue was ever considered or addressed by the Council. A reading of Chapter 27 as a whole, however, does give an indication that the Council did not intend for the prohibitions in Section 27-12 to apply to the County and its agencies. Division 3 of the Chapter, which deals with discrimination in Employment, specifically and explicitly includes the County and its instrumentalities in its definition of "employer." Section 27-18(b) ("the term shall include Montgomery County and its instrumentalities and agencies."). The Council explicitly included the County in the coverage of the Chapter's sections addressing employment discrimination. The fact that it did not explicitly include the County in the coverage of the sections addressing discrimination in real estate indicates that it did not intend the County and its agencies to be covered.

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Even if one assumes that the term "person" as defined in Section 27-11 includes the County, there is no evidence that the Council intended that the coverage of the housing discrimination statute would extend to correctional facilities or other places of court ordered confinement. Although the definition of "housing" in the statute is broad, a review of the legislative history of the Section does not reveal any intent by the Council that its provisions would cover facilities such as the MCDC which are not available to the general public. Indeed, the Council's focus was on housing that is made available in the stream of commerce, either through sale or lease.

It is the opinion of this office, therefore, that the HRC should not exercise jurisdiction over an inmate's complaint of housing discrimination against the MCDC or the Correction and Rehabilitation Department under Section 27-12. Please note that this opinion regarding the application of the law to the County and its agencies applies only to Division 2 (Discrimination in Real Estate) of Chapter 27 and not to the other divisions of the Chapter. Division 3 (Discrimination in Employment) of the Chapter, as noted above, explicitly extends its coverage to the County and its agencies. The provisions of Division 1 (Discrimination in Places of Public Accommodation) of the Chapter do not depend on the definition of "person" used in Division 2. Instead, Division 1 uses a definition of "place of public accommodation" which may include certain places of public accommodation operated by the County and its agencies, but not the MCDC.

cc: Edward B. Lattner, Associate County Attorney
David E. Stevenson, Associate County Attorney

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