Opinion No. 63-150

November 5, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Robert H. Sprecher Assistant District Attorney Roswell, New Mexico

QUESTION

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Do the statutory restrictions against discrimination apply to single dwelling houses, duplexes, or apartment buildings?

CONCLUSIONS

No. See analysis.

OPINION

*{*346}* **ANALYSIS**

The Civil Rights Act is embodied in N.M.S.A., 49-8-1 through 49-8-7, 1953 Compilation (Supp. '63), the title of which makes clear the purpose of such law as follows:

"An Act prohibiting discrimination in places of public accommodation, resort and amusement because of race, color, religion, ancestry or national origin and providing penalties."

We are limiting our inquiry here to the scope of the words "public accommodation, resort and amusement" as used in the Act, inasmuch as the acts prescribed are those taking place within a certain type of place.

N.M.S.A., 49-8-5 supra, furnishes *{*347}* a definition useful for our analysis, as follows:

"A place of public accommodation, resort or amusement within the meaning of this act shall be deemed to include inns, taverns, roadhouses, hotels, motels and tourist courts, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, restaurants, eating houses and any place where food is sold for consumption on the premises, buffets, saloons, barrooms and any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where ice, ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; dispensaries, clinics, hospitals, bathhouses, theatres, motion picture houses, music halls, concert halls, circuses, race courses, skating rinks,

amusement and recreation parks, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors, swimming pools, public libraries, garages, all public conveyances operated on land, water or in the air as well as the stations and terminals thereof; **public halls and public elevators of buildings and structures occupied by two (2) or more tenants, or by the owner and one (1) or more tenants. Nothing herein contained shall be construed to include any institution, club or place of accommodation which is in its nature distinctly private,** or to conflict with existing federal statutes relative to the sale of intoxicating liquors to Indians." (Emphasis added)

Where an attempt is made to construe a statute, the question always arises as to where and how far one should go in determining legislative intent. Section 3002, **Sutherland Statutory Construction** reads as follows:

"As a part of its legislative function a legislature may enact law and define its meaning. Where in the same statute the legislature defines the meaning of the words used, it expresses most authoritatively its intent and its definitions and construction is binding on the courts. Such internal legislative construction is of the highest value and prevails over executive or administrative construction and other extrinsic aids."

And, Section 4814, Sutherland supra continues:

". . . In interpreting a statute a court looks to the subject of the act and the object which it intends to accomplish. When the subject matter is clearly ascertained and its general intent is determined, all words used in the act will be interpreted according to that intent. . ."

There is no question as to the object which the Act involved herein intends to accomplish, i.e., to eliminate discrimination in the "public places" which are described therein. The only question is as to the extent of its application. In order to find our answer we must examine, first and foremost, the definition section of the Act in accordance with our statements above.

As is readily discernible from a reading of Section 49-8-5 supra, the legislature has set forth specific "places" as falling within the subject defined. However, the emphasized portion is stated in more general terms. This brings us to a consideration of the possible application *{*348}* of the doctrine of "ejusdem generis" (meaning literally, "of the same kind"), which is a useful tool in determining the import of series of words or phrases in legislative acts. Essentially it operates as is stated in Section 4909, Sutherland, supra:

". . . Where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words."

Thus, if we follow the foregoing to the letter we must come to the obvious conclusion that only those places which are of a public or quasi-public nature or which invite the

patronage of the public in general are to be included in the phrase "public accommodation, resort or amusement." This is so because of the nature of the specific words enumerated in Section 49-8-5 supra. However, we must likewise consider what is stated in 14 C.J.S. 1166, Civil Rights § 3 (d):

"Where a civil rights act contains provisions showing that it is applicable to "any places of public accommodation, resort or amusement" and then provides that "a place of public accommodation, resort or amusement" within the meaning of the statute shall be deemed to include certain places which are named specifically, it has been held that certain places not so named do not fall within the operative effect of the statute. **(Campbell v. Eichert,** 278 N. Y. S. 946, 155 Misc. 164; **Reed v. Hollywood Professional School,** 338 P.2nd 633, 169 C.A. 2d Supp. 887). There is authority for the view, however, that the application of the statute is not necessarily limited to the places which are named specifically. . ." **(Johnson v. Auburn & Syracuse Electric R. Co.,** 119 N.E. 72, 222 N.Y. 443; **Everett v. Harron,** 110 A. 2d 383, 380 Pa. 123). (Citations inserted)

We are inclined to agree with the latter group of cases, i.e., those which do not limit the application of the statute to places specifically named therein. The former cases nullify the operation of the doctrine. In support of this position we cite the following from the case of **Cain v. Bowlby,** 114 F.2d 519, certiorari denied 61 S. Ct. 319, 311 U.S. 710, as indicating that the doctrine is applied in this area in the customary manner:

"Where enumerated or designated classes of persons or things in a statute are followed by general words, the general words must be confined to persons or things reasonably of the same kind, under the rule of "ejusdem generis," but like many other rules, it is merely a rule of construction to be used as an aid in ascertaining the legislative intent."

The clause "nothing herein contained shall be construed to include any institution, club or place of accommodation which is in its nature distinctly private" furnishes a definite basis upon which we can exclude single dwelling houses from the sanctions of the statute. Still, this answer must be qualified inasmuch as we believe that the purpose for which the house is used can be of controlling significance. It has been held that "a private house may become a "place of public resort" when frequented by many persons under suspicious circumstances." **State v. Pratt,** 34 Vt. 323, 325. We would say, then, that single dwelling houses used purely for residential purposes would not fall within the definition of "places of accommodation" as used in our Act.

*{*349}* The determination of whether or not duplexes and apartment buildings were intended to be included within the subject defined in Section 49-8-5 supra, is made difficult because of the words "public halls and public elevators of buildings and structures occupied by two (2) or more tenants, or by the owner and one (1) or more tenants." If it could be said, free of doubt, that the halls and elevators, if any, within these buildings are public, we would unhesitatingly answer in the affirmative. However, we believe that such a construction, while feasible, would place unreasonable elasticity in the words as they are used in the statute and as normally defined. A good example,

and of prime importance in this instance, is the word "public" defined in Webster's New Collegiate Dictionary, 2nd Ed., as follows:

"(1) of or pertaining to the people; relating to, or belonging to, or affecting a nation, state or community at large; -- opposed to private. (2) open to common or general use, enjoyment, etc. . ."

Based upon the foregoing, it is our opinion that single dwellings, duplexes and apartment buildings, being in their nature distinctly private, are not "places of accommodation" as defined in our Civil Rights Act, and that consequently the restrictions against discrimination do not apply thereto. Again, however, as in the case of single dwelling houses, we attach the same qualification, viz, that the purpose for which these buildings are used may be decisive.

By: Frank Bachicha, Jr.

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