Opinion No. 76-14

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BY: OPINION OF TONEY ANAYA, Attorney General Patricio M. Serna, Assistant Attorney General

TO: Mr. Frank J. Beserra, Executive Director, Human Rights Commission of New Mexico, Villagra Building, Santa Fe, New Mexico 87503

QUESTIONS

Question

Does the term "Public Accommodation" as used in subsection 4-33-7 (F) in the Human Rights Act (Sections 4-33-1 to 4-33-13, NMSA, 1953 Comp.) include establishments owned or operated by the state and all of its political subdivisions for the purpose of determining whether the Human Rights Commission has jurisdiction to investigate charges of discrimination in the use of such establishments?

Conclusion

Yes, if the establishment in question provides or offers its services, facilities, accommodations, or goods to the public. See analysis.

OPINION

*{*72}* Analysis

The Human Rights Act, Section 4-33-7 (F), **supra** provides:

"[It is an unlawful discriminatory practice for; . . .] **any person in any public accommodation** to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of race, religion, color, national origin, ancestry, sex and physical or mental handicap." (Emphasis added.)

The definition of "person" within the Human Rights Act, Section 4-33-2 (A), **supra** is:

"'person' means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers **or the state and all of its political subdivisions;"** (Emphasis added)

"Public accommodation" is defined by the Human Rights Act, Section 4-33-2 (G), **supra** as follows:

"'public accommodation" means **any establishment that provides or offers its services, facilities, accommodations, or goods to the public,** but does not include a bona fide private club or other place or establishment which is by its nature and use distinctly private." (Emphasis added.)

The courts in New Mexico have not construed the term "public accommodation." We must look then to the legislative intent in enacting the Human Rights Act.

In construing statutes, courts seek only legislative intent. **Trujillo v. Romero,** 77 N.M. 79, 419 P.2d 456 (1966). Legislative intent is to be determined primarily by the language of the act **State v. Ortega,** 77 N.M. 312, 422 P.2d 353 (1966); **Winston v. New Mexico State Police Bd.,** 8 N.M. 510, 454 P.2d 967 (1969) and by the object sought to be accomplished and the wrong to be remedied. **Chavez v. State Farm Mutual Auto. Ins. Co.,** 87 N.M. 327, 533 P.2d 100 (1975). Courts, in construing statutes must give words their ordinary and *{*73}* usual meaning unless a different intent is clearly indicated. **Winston v. New Mexico State Police Bd., supra; Mobile America, Inc. v. Sandoval County Commission,** 85 N.M. 794, 518 P.2d 774 (1974); **State v. Reinhart,** 79 N.M. 36, 439 P.2d 554 (1968). Furthermore, courts will not apply any rules of statutory construction to override an intent which is clear and plainly appears, **State v. Ortega, supra,** such as when the statutory terms are plain and unambiguous. **Martinez v. Research Park, Inc.,** 75 N.M. 672, 410 P.2d 200 (1965).

To hold that the prohibition against discrimination in the public accommodation section of the Human Rights Act does not apply to the State and its political subdivisions would require a narrow definition of "public accommodation." This we cannot find was the legislative intent.

It is our opinion that, when viewed in light of the foregoing, coverage of the Public Accommodation section of the Human Rights Act is very broad and includes state agencies and all of its political subdivisions. The terms of the Act are clear, unambiguous, and easily determinable by their ordinary and usual meaning. Also, the object sought -- the elimination of unlawful discrimination in any public accommodation -- is consistent with the broad interpretation given to the Act's coverage.

Even assuming, for the sake of argument, that the legislative intent was in doubt regarding the Act's coverage, we believe that application of the recognized rules of statutory construction would result in the same broad interpretation. The court in the case of **Local Finance Co. of Rackland v. Massachusetts Commission Against Discrimination,** 355 Mass. 10, 242 N.E. 2d 536 (1968) held that the term "place of public accommodation" as used in a civil rights statute is to be given a broad inclusive interpretation. In **State v. Rosecliff Realty Co.,** 1 N.J. Super 94, 62 A.2d 488 (1948) the court held that the term "any" within a statute granting the right to equality in any place of public accommodation is to be given the full force of the terms "every" or "all."

It is a well established rule of construction that attention should be paid to the prior condition of the law to aid in determining the full meaning of any statutory change.

James v. Board of Commissioners of Socorro County, 24 N.M. 509, 174 P. 2d 1001 (1918). In addition, the adoption of statutory amendments is evidence of intention to change the provisions of the original law. **Martinez v. Research Park, Inc.,** 75 N.M. 672, 410 P.2d 200 (1965). In line with this, Section 49-8-5, NMSA, 1953 Comp., which was repealed when the present Act was enacted, defined "places of public accommodation, resort, or amusement" by specifically listing the various actual places included within the meaning of the Act. The present definition of "public accommodation" materially broadens the previous definition by eliminating the previous listing of establishments covered and replacing the specific, restricted listing by the inclusion of the words " **any** establishment that provides or offers its services, facilities, accommodations, or goods to the public. . . ." Section 4-33-2 (G), **supra** (emphasis added).

Particular words, phrases and provisions must be construed with reference to the leading idea or purpose derived from the whole statute and each part should be construed in connection with every other part so as to produce *{*74}* a harmonious whole. **Allen v. McClellan,** 75 N.M. 400, 405 P.2d 405 (1965); **State ex rel. Clinton Realty Co. v. Scarborough,** 78 N.M. 132, 429 P.2d 330 (1967). Section 4-33-2, **supra** defines "person," "employer," "employee" and "labor organization" as:

"A. 'person' means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or **the state and all of its political subdivisions."** (Emphasis added.)

"B. 'employer' means any **person** employing four [4] or more persons, and any **person** acting for an employer." (Emphasis added.)

"D. 'employee' means any **person** in the employ of an employer." (Emphasis added.)

"E. 'labor organization' means any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with **employers** concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment." (Emphasis added.)

Obviously, the foregoing definitions convey the leading idea or purpose of encompassing state agencies and its political subdivisions within the meaning of the entire Act, not just selected portions. Section 4-33-7 prohibits certain practices as being unlawful discriminatory practices. There is no question that subsection (A), (C), (D), (E), (G), (H), and (I) of Section 4-33-7, **supra,** apply to state government and its political subdivisions. Subsection (B) applies only to labor organizations specifically. The phrase "public accommodation" as used in subsection (F) of Section 4-33-7 must also be construed as applying to state government and its political subdivisions to produce a harmonious whole.

Section 4-33-2 (G), **supra** excludes a bona fide private club or other place or establishment which is "by its nature and use distinctly private." State government and

its political subdivisions are not by their "nature and use distinctly private." Thus, they are not excluded from the coverage of subsection 4-33-7 (F).

While it is not the primary purpose of this opinion to interpret the extent of the exclusion provided by subsection 4-33-2 (G), we would note that it is our opinion that this subsection of the Act should be construed on a case by case basis. It is noted that **Solomon v. Miami Women's Club,** 359 F. Supp. 41 (D.C. Fla. 1973), a case involving the 1964 Civil Rights Act regarding Public Accommodations, 42 U.S.C. Sec. 2000 a, held that among the several factors which a court will look at in order to determine whether a club, in fact, is private or merely a subterfuge to evade the Civil Rights Act, are whether the membership is limited or open-ended; whether the facilities are open to the public; existence of easily articulated admission standards; and whether the funds are derived from public or private sources. The case of **Commonwealth of Pennsylvania Human Relations Commission v. Loyal Order of Moose, Lodge No. 107,** 448 Pa. 451, 294 A.2d 594, **appeal dismissed,** 400 U.S. 1052 (1972) held that a fraternal organization, by its practice of opening its dining room and bar to nonmembers, subject only to the limitation that they be of the caucasian race and invited by a member, brought itself within the ambit of a "public *{*75}* accommodation" with respect to its dining and bar facilities and was prohibited by the Human Relations Act from withholding service to any person because of his race or color within those facilities.

In conclusion, we would note that not every piece of property of the State or its political subdivisions is a public accommodation under the jurisdiction of the Human Rights Commission. The Human Rights Commission, in making the initial determination regarding jurisdiction must determine that the establishment "provides or offers its services, facilities, accommodations or goods to the public." Secondly, the Commission must determine, after an investigation and a hearing, that such services, facilities, accommodations or goods were used in an unlawful discriminatory manner.