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Civil Rights

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CIVIL RIGHTS

Administrative Prevention of Racial Discrimination—Its Expansion to Most Real Property and Business Transactions. By Chapter 37, Session Laws of 1957, the Washington legislature greatly expanded the scope of administrative control and enforcement of the prevention of discrimination on account of race, creed, color or national origin. Until now, that control had been only in employment; henceforth it extends to places of public resort (defined most liberally) and to publicly-assisted housing (again defined most liberally).

Administrative control in this area was first provided in Washington in 1949, when the Board Against Discrimination in Employment was created. In the seven years of its existence, the board has made steady progress in the employment field. Education, conciliation and persuasion so far have been the means used by the board for effectuating the purposes of the legislation. For example, the annual report of the board for 1956 shows the handling of 274 "formal" and 143 "informal" complaints since 1949, and of the 148 complaints upon which affirmative action was taken, all were disposed of by conciliation. Mr. Alfred Westberg, Chairman of the Board, informs us that no case has yet gone to the stage of formal administrative hearing, much less to court.

The administrative board has now been granted, by this 1957 legislation, an enormously broader field; significantly, its name is now simply the Board Against Discrimination. Except for the expansion in coverage, however, the purposes and method of operation of the board remain basically unchanged. In general, the statute now, as it did before, provides elaborate definitions of essential terms, machinery for conduct of the board's business, and administrative remedies to the person who, after filing his complaint with the board, is found to be the victim of discrimination. These remedies may include the application of the board's efforts in working with the alleged offender by conference, conciliation and persuasion, and then, failing that, the issuance of orders to cease and desist from specified unfair practices, including such affirmative relief as requiring hiring, reinstatement or up-grading of employees, requiring admission or restoration of a complainant to membership in an organization, or requiring such other action as will effectuate the purposes of the legislation. Provisions are made for opportunity to the complainant and the alleged offender to

be heard, with right of counsel, for the board to require compulsory attendance of witnesses, and for superior court review of administrative decisions. Although the findings of the administrative tribunal are to be conclusive if supported by substantial and competent evidence, the reviewing court may admit additional evidence if believed necessary for proper decision.

The first major addition to the coverage is the subjection of places of "public resort, accommodation, assemblage or amusement" to the application of administrative relief and control.

For sixty-seven years there has been a criminal statute on the books making it a misdemeanor to discriminate in places of public accommodation.¹ In 1909 the present language appeared, *i.e.*, "public resort, accommodation, assemblage or amusement".² What constitutes such a place of public resort? The quoted language, as it appeared in the 1909 statute, was interpreted by the Washington Supreme Court to include a theatre,³ but not a soda fountain in a drug store.⁴ Then, in 1953, the legislature amended the criminal statute by providing, still as a criminal statute,⁵ a detailed definition of this same phrase, greatly expanding the previous conception, and extending the meaning of these terms far beyond their dictionary definition. Although we must admit a certain lack of confidence in our analysis because of ambiguity in the statute, we set forth the scope of this new definition of a place of public resort:

It includes (but is not limited to) any public place, being or having the following attributes:

- a) being kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted
 - 1) for the entertainment, housing or lodging of transient guests or for the benefit, use or accommodation of those seeking health, or rest, or
 - 2) for the sale of goods and merchandise, or
 - 3) for the rendering of personal service, or
 - 4) for public conveyance or transportation, or
- b) where food or beverages are sold for consumption on the premises, or

¹ Wash. Sess. Laws 1889-90, c. 16, p. 524.

² Wash. Sess. Laws 1909, c. 249, § 434.

³ *Anderson v. Pantages Theatre Co.*, 114 Wash. 24, 194 Pac. 813 (1921).

⁴ *Goff v. Savage*, 122 Wash. 194, 210 Pac. 374 (1922).

⁵ RCW 9.91.010.

- c) where public amusement, entertainment, sports or recreation is offered with or without charge, or
- d) where medical service or care is made available, or
- e) where the public gathers for amusement, recreation or public purposes, or
- f) places constituting public halls, public elevators, public wash-rooms of buildings occupied by two or more tenants (or landlord plus one or more tenants), or
- g) any public library or educational institution wholly or partially supported by public funds, or
- h) schools of special instruction, or nursery schools, or day care centers, or children's camps.

This criminal statute excludes from its reach any "institute," bona fide club, or place of accommodation which is by its nature distinctly private, though where public use is permitted that use is to be covered. It also excludes any educational facility operated or maintained by a bona fide religious or sectarian institution.

In the 1957 legislation affording administrative protection to prospective patrons of places of "public resort" this same definition, with some changes, has been carried along. The changes referred to are:

- a) The definition no longer is prefaced with the phrase, "any public place;" now it reads merely, "any place."
- b) It expands the previous phrase, "for the sale of goods and merchandise" (see item a-2, above), to include sales of "services and personal property."
- c) It removes from the classification of "any public library or educational institution" (see item g, above) the qualification that it must be wholly or partially supported by public funds.
- d) It specifically includes fraternal organizations among those places which are exempt from the provisions of the legislation.

Needless to say, with this comprehensive and sweeping definition of a place of "public resort," the old *Goff* decision which refused to classify the soda fountain in the drug store as within the definition has passed into limbo. Viewed in a more realistic manner, the definition, like that of admissible hearsay, might better have been expressed in the converse terms of including everything, with specific exceptions—merely that every place is within the definition except the private club, the private "institute," the religious school, that real property which is not included in the "publicly-assisted housing" described below, the business loca-

tion which is disassociated from transactions with the customer, and the private home.

The second major addition to the coverage is the extension of the board's power to the sale, use and financing of "publicly-assisted housing." This phrase too enjoys a very elaborate and sweeping definition. It includes any building used or to be used for the residence or sleeping quarters of one or more persons the acquisition, construction, rehabilitation, repair or maintenance of which is either (a) financed by a loan guaranteed or insured by the federal or state governments or any agency thereof, so long as such loan remains so guaranteed or insured, or (b) subject to an outstanding commitment for such loan.

It should be pointed out that the 1957 legislation is in addition to, and not in substitution of, other enforcement measures in the civil rights area. There yet remain, for example, the criminal sanctions applicable to places of "public resort" as discussed above. Also, the person aggrieved by discriminatory practices in violation of the criminal statute has still a right to civil damages from the offender, as illustrated by the case cited earlier.⁶ One qualification must here be observed: The 1957 legislation providing for administrative enforcement does require the aggrieved person to make an election of his remedies—of civil recovery or of administrative assistance. The details of the election are not specified, but it is to be presumed that either the commencement of the civil action or the filing of the complaint for administrative relief would constitute such an election.

The implications and scope of application of the administrative power as thus created in this 1957 legislation are, of course, awesome. The ideals of equality of treatment are thus brought much closer to the lives of all than most persons may have realized or, for that matter, than many may wish to realize. For example, every home upon which there is an FHA loan, nay, even an FHA commitment for a loan, is now subject to the board's power. And this power apparently includes the specific enforcement of real estate transactions which would have been entered into but for the race, creed, color or national origin of the prospective purchaser.

CRIMINAL LAW

Perjury by Deposition—An Abortive Re-Definition. Chapter 46, Session Laws of 1957, re-defining perjury, is the child of an unfortunate 1938 supreme court decision and the belated labor of a confused 1957

⁶ See footnote 3, *supra*.