

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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PENNSYLVANIA HUMAN RELATIONS COMMISSION :  
-vs- : DOCKET NO. P-403  
WHITEMARSH MEMORIAL PARK CEMETERIES CO. :

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EDWARD N. DAVENPORT :  
-vs- : DOCKET NO. P-416  
WHITEMARSH MEMORIAL PARK CEMETERIES CO. :

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OPINION, INCLUDING FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
COMMISSION'S DECISION AND  
FINAL ORDER  
\_\_\_\_\_

The two complaints listed above, in both of which the Whitemarsh Memorial Park Cemeteries Co. is set forth as the respondent, were joined together for public hearing pursuant to Section 105.13 of the Regulations of the Pennsylvania Human Relations Commission ( hereinafter referred to as "Commission"), and came up for public hearing on May 13, 1966, at 10:00 o'clock A.M., in the Montgomery County Court House Annex, Norristown, Pennsylvania, before a Hearing Panel of three Commissioners, consisting of Joseph X. Yaffe, Esq., presiding, Samuel H. Daroff and Dr. Robert Johnson Smith.

The Commission itself instituted the complaint in Docket No. P-403, charging that the respondent cemetery's rules and its pieces of literature contain illegal racial restrictions, limiting interment in its cemetery, Whitemarsh Memorial Park, to the bodies of persons of the white or Caucasian race only.

The complainant in Docket No. P-416 is Edward N. Davenport, a funeral director, who owns burial lots in the respondent's cemetery and who charges that the respondent has refused to permit him to inter the remains of Negro persons in said burial lots.

The facts are not in dispute and have been stipulated by David H. Rosenbluth, Esq., attorney for the respondent, and Nathan Agran, Esq., General Counsel for the Commission, representing both complainants. Such stipulation was submitted at the public hearing in the form of an Agreed Statement of Facts, in accordance with the provisions of Section 105.20 of the Commission's Regulations.

The respondent has filed verified Answers to the two complaints, admitting the facts but denying that the respondent has committed unlawful discriminatory practices under the provisions of the Pennsylvania Human Relations Act (hereinafter referred to as "Act").

The question involved is a fairly narrow one: "Is the Whitemarsh Memorial Park a place of public accommodation within the meaning of Section 4(1) of the Act?" An affirmative answer requires a finding that the respondent is in violation of the Act.

Briefs of law were submitted to the Hearing Commissioners by both attorneys and have been carefully considered by the Hearing Commissioners, who now make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The respondent, Whitemarsh Memorial Park Cemeteries Co., is a Pennsylvania corporation with principal place of business located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania.

2. The respondent, Whitemarsh Memorial Park Cemeteries Co., is not church affiliated.

3. The respondent commenced operation as a cemetery in or about the year 1927, and from said time to and including the present time, has owned and operated the cemetery known as "Whitemarsh Memorial Park" at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania.

4. The present officers of the respondent corporation are George E. Meagher, Jr., President; Ernest Behrens, Vice-President; and La Verne Meagher, Secretary-Treasurer.

5. The respondent maintains and operates said cemetery for the burial of dead human beings and in connection therewith, has laid out land in suitable burial lots and has sold said lots for burial purposes only to the general public through advertisements and through a sales organization.

6. The respondent has inserted express language in its Regulations, in its Agreement of Sale form, and in its Deed form, relating to the said cemetery or burial park known as

"Whitemarsh Memorial Park", as follows:

(a) Regulations ---

"Rule 3-R - Interment for Members of Caucasian Race:- No interment of any body or the cremated remains of any body other than that of a human being of the White race and/or the Caucasian race shall be permitted in the cemetery..."

(b) Agreement of Sale ---

"... The Purchaser agrees to buy and the Company agrees to obtain for the benefit of and sell to the Purchaser, his heirs or assigns, in accordance with the terms hereof, the merchandise, interment spaces for the exclusive right of interment of members of the Caucasian race, and services hereinafter enumerated and designated for which the Purchaser agrees to pay to the Company the sum of ....."

(c) Deed ---

".... That this conveyance, and all right, title and interest hereby granted in the property above described, is subject to all laws and ordinances, and to the following conditions, reservations, restrictions and rules and regulations, and the Grantee, by the acceptance of this indenture, covenants and agrees that:

- (a) No bodies, except those of persons of the White or Caucasian race, shall be interred in said property, or portion thereof."

7. Edward N. Davenport, complainant named in Docket No. P-416, is a funeral director with principal place of business in Norristown, Montgomery County, Pennsylvania, who, together with his wife, Beatrice, is the owner of cemetery burial lots in the said Whitemarsh Memorial Park, being Sections 464, 465, 467 and 468 of Block "B"; Sections 4671, 4672, 4673, 4674, 4704 and 4708 of Block "J"; Sections 4911, 4976, 4977, 4978, 4979, 4990, 5038 and 5060 of Block "K"; Sections 6011, 6017, 6018 and 6120

of Block "L"; and Sections 482, 483, 484, 488, 489, 490 and 532 of Block "U".

8. The said Edward N. Davenport is a licensed funeral director of the Commonwealth of Pennsylvania.

9. The said Edward N. Davenport purchased the burial lots thus owned by him from a previous lot owner and acquired title to said burial lots with the full knowledge and consent of the respondent.

10. The respondent has refused and still refuses to permit the said Edward N. Davenport to inter the remains of any Negro human being in any of the burial lots thus owned by him and situated in Whitemarsh Memorial Park.

11. In recent years, the respondent has established and is now operating a cemetery adjoining the Whitemarsh Memorial Park, known as "Veterans Memorial Garden of Whitemarsh Memorial Park" in which the respondent permits the remains of all persons, without regard to their race, religion or national origin, to be interred; and the Agreement of Sale, Deed and other forms pertaining to the purchase of burial lots in said new cemetery do not contain any restrictions limiting interment therein to persons of the white or Caucasian race only.

#### CONCLUSIONS OF LAW

1. The respondent, Whitemarsh Memorial Park Cemeteries Co., as the operator of Whitemarsh Memorial Park, Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania, a cemetery for the interment of dead human bodies, is a proprietor of a place of public accommodation within the meaning of that term as defined in Section 4(1) of the Act.

2. By refusing to permit the bodies of Negroes or other persons not of the white or Caucasian race to be interred in Whitemarsh Memorial Park, the respondent has committed unlawful discriminatory practices in violation of Section 5(i)(1) of the Act.

3. The respondent, in refusing permission to the complainant, Edward N. Davenport, to bury or inter Negroes in burial lots owned by him in the respondent's cemetery, Whitemarsh Memorial Park, for the reason that said Negroes were not white persons, has committed unlawful discriminatory practices under Section 5(i)(1) of the Act.

4. Respondent, in maintaining a rule and regulation to the effect that interment in its cemetery, Whitemarsh Memorial Park, shall be limited to the bodies of human beings of the white or Caucasian race, has committed an unlawful discriminatory practice in violation of Section 5(i)(2) of the Act.

5. Respondent, in publishing and refusing to delete from its Agreement of Sale and Deed forms pertaining to the sale of burial lots in its cemetery, Whitemarsh Memorial Park, a notice and announcement that interment therein shall be restricted to bodies of human beings of the white or Caucasian race, has committed unlawful discriminatory practices in violation of Section 5(i)(2) of the Act.

The Hearing Commissioners are unanimously of the opinion that the Commission should enter an order against the respondent, Whitemarsh Memorial Park Cemeteries Co., requiring it to cease and desist from refusing to permit the bodies of

other than white or Caucasian persons to be buried in its cemetery, Whitemarsh Memorial Park.

The common, ordinary meaning of "accommodation" as set forth in Webster's Third New International Dictionary is, "Something that is supplied for convenience or to satisfy a need". To decide that a cemetery or burial park is something other than an accommodation is to ignore what must be taken as a verity by any reasonable or fair-minded person. A cemetery is as much needed for the convenience of the public as is a restaurant, a barber shop or any other place of public accommodation being dealt with by the Commission. Indeed, it is probably more of a necessity to the average family than most of the places of public accommodations which are enumerated in the Act.

That the cemetery in question, Whitemarsh Memorial Park, is "public" is not being disputed and has been stipulated by both attorneys. The Commission has in the past and will continue to consider any cemetery or any section of a cemetery which is reserved for religious or fraternal groups as "private" and therefore exempt from the public accommodations provisions of the Act. But the Whitemarsh Memorial Park is not such a cemetery and is open to the general public through advertisements and a sales organization.

It is significant that the Legislature, when it enacted the Pennsylvania Human Relations Act in 1961, used almost exactly the same definition of "a place of public accommodation, resort or amusement" as that set forth in Sections 653 and 654 of the Penal Code known as the Civil Rights

Act of 1939. The important change enacted in 1961 was the addition of the general language defining a place of public accommodation as "any place which is open to, accepts or solicits the patronage of the general public, including but not limited to ...."

The Hearing Commissioners are also cognizant of the circumstances under which the public accommodations provisions of the Act were passed by the Legislature in 1961, when this nation and this Commonwealth were witnessing a social revolution of a magnitude never previously experienced. The Whitemarsh Memorial Park is a cemetery which is open to and solicits the patronage of the general public, despite the fact that it does not presently accept the patronage of the Negro public or that of any segment of the public other than the white public.

Of similar significance is the fact that, unlike many similar statutes, Section 12 of the Pennsylvania Act provides, "The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply".

The primary purpose of the Human Relations Act is to afford to all persons, regardless of their race, religion or national origin, equal advantages and opportunities, especially in connection with places which are advertised and open to the public at large and which are not strictly private in character. To permit the respondent to continue in its present practices at the Whitemarsh Memorial Park would be tantamount to permitting it to continue to deny basic advantages and opportunities to Negroes and other persons who are not of the



the white or Caucasian race.

The Commission must give full credence to the express language of the Legislature which defined a place of public accommodation as "any place which is open to, accepts or solicits the patronage of the general public..." A cemetery which advertises the sale of its burial lots, as does the respondent, to the general public, must be construed as being a place of public accommodation.

The Hearing Commissioners are also mindful of the important rule of law announced in the famous case of Shelley v. Kraemer, 334 U.S. 1 (1948) that the judicial enforcement by state courts of covenants restricting the use and occupancy of real property to persons of the Caucasian Race is in violation of the "equal protection" clause of the 14th Amendment to the United States Constitution. This basic rule is as much applicable to cemetery lots as to any other real property interest.

At the hearing of these cases, statements were made by the respondent, through its president, a director and controlling shareholder, Mr. George E. Meagher, Jr., and through its attorney, to the effect that the respondent's strict adherence to the provisions of the restrictive covenants set forth in the Agreement of Sale and Deed is for the protection of the owners of burial lots in Whitemarsh Memorial Park who purchased such lots before the enactment of the Human Relations Act. We cannot agree that this is a valid or legal reason for continuing practices which are labeled as "unlawful discriminatory practices" in the said Act.

The respondent is obligated to comply with the applicable provisions of the Human Relations Act, because of the express provisions set forth in each deed conveying title to such burial lots, as follows:

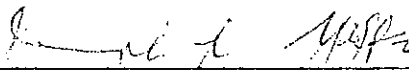
"That this conveyance, and all right, title and interest hereby granted in the property above described, is subject to all laws and ordinances, and to the following conditions ...." (underlining supplied for emphasis)

The owners of such burial lots must accept and abide by the provisions of an act of assembly of the Commonwealth. The language of Mr. Justice Dooling, in the case of Long v. Mountain View Cemetery Assn., 130 Cal. App. 2d 328, 278 P. 2d 945 (1955), cited in each of the briefs of law submitted by the attorneys, is particularly pertinent:

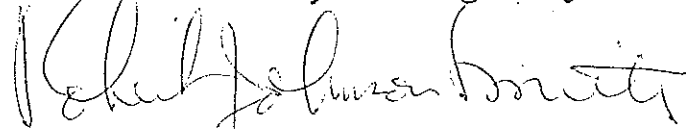
".... I cannot believe that a man's mortal remains will disintegrate any less peaceably because of the close proximity of the body of a member of another race, and in that inevitable disintegration I am sure that the pigmentation of the skin cannot long endure. It strikes me that the carrying of racial discrimination into the burial grounds is a particularly stupid form of human arrogance and intolerance. If life does not do so, the universal fellowship of death should teach humility. The good people who insist on the racial segregation of what is mortal in man may be shocked to learn when their own lives end, that God has reserved no racially exclusive position for them in the hereafter."

For the several reasons set forth, the Hearing Commissioners recommend that the Commission enter a cease and

desist order against Whitemarsh Memorial Park Cemeteries Co., requiring it to discontinue its present practices of restricting interment, in its cemetery known as Whitemarsh Memorial Park, to persons of the white or Caucasian race only.

  
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JOSEPH X. YAFFE, Presiding Hearing Commissioner

  
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SAMUEL H. DAROFF, Hearing Commissioner

  
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ROBERT JOHNSON SMITH, Hearing Commissioner

COMMISSION'S DECISION

AND NOW, May 31, 1966, upon recommendation of the Hearing Commissioners, upon all of the evidence at the public hearing of this case, and in consideration of the findings of fact and conclusions of law by the Hearing Commissioners, the Pennsylvania Human Relations Commission unanimously finds and determines:

1. The Commission has jurisdiction over the respondent, over the subject matter of this proceeding and over the instant complaints.

2. The Whitemarsh Memorial Park, a cemetery located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania, and operated by the respondent, Whitemarsh Memorial Park Cemeteries Co., a Pennsylvania corporation, is a place of public accommodation which is open to and which solicits

the patronage of the general public, within the meaning of that term as it is defined in Section 4(1) of the Pennsylvania Human Relations Act.

3. The respondent has committed unlawful discriminatory practices in violation of Sections 5(i)(1) and 5(i)(2) of the Pennsylvania Human Relations Act, in that

(a) it has refused, withheld from and denied, and still refuses, withholds from and denies to Negroes, because of their race, the accommodations, advantages, facilities and privileges of its cemetery, Whitemarsh Memorial Park, a place of public accommodation,

(b) it has refused and still refuses to permit the complainant, Edward N. Davenport, a funeral director, to inter the bodies of Negroes in burial lots owned by said complainant in the Whitemarsh Memorial Park, a cemetery and place of public accommodation which is owned and operated by the respondent, and

(c) it has published, circulated and issued printed notices and communications to the effect that the accommodations, advantages, facilities and privileges of Whitemarsh Memorial Park are available only for the interment of persons of the white or Caucasian race, and that the patronage thereof of Negroes is unwelcome, objectionable, not acceptable, desired or solicited.

FINAL ORDER

AND NOW, this 31st day of May, 1966, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Commission's Decision, and pursuant to the provisions of Section 9 of the Pennsylvania Human Relations Act, it is hereby

ORDERED, by the Pennsylvania Human Relations Commission:

1. That the respondent, Whitemarsh Memorial Park Cemeteries Co., its officers, managers, agents and employes, shall cease and desist from refusing to permit the bodies of Negroes to be interred and from limiting and restricting the use of its burial lots to the bodies of persons of the white or Caucasian race only, in the cemetery known as Whitemarsh Memorial Park, located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania, or in any other public cemetery now or hereafter owned, operated or controlled by the respondent anywhere in the Commonwealth of Pennsylvania.

2. That the respondent, Whitemarsh Memorial Park Cemeteries Co., its officers, managers agents and employes, shall cease and desist from refusing or denying to the complainant, Edward N. Davenport, a funeral director, the right to inter the bodies of Negroes in any burial lots owned by the said Edward N. Davenport in Whitemarsh Memorial Park, the cemetery owned and operated by the respondent and located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania.

3. That the respondent, Whitemarsh Memorial Park Cemeteries Co., its officers, managers, agents and employes, shall cease and desist from publishing, circulating or issuing any printed statements or notices, in its Rules and Regulations, Agreement of Sale forms, Deed forms, or in any other forms used in connection with the promotion or sale of burial lots located in Whitemarsh Memorial Park or in any other public cemetery or burial park now or hereafter owned, operated or controlled by the respondent anywhere in the Commonwealth of Pennsylvania, to the effect that interment therein is restricted to the bodies of persons of the white or Caucasian race only.

4. That the respondent, Whitemarsh Memorial Park Cemeteries Co., through its officers, managers, agents and employes, shall take the following affirmative action, which in the judgment of the Commission, will effectuate the purposes of the Pennsylvania Human Relations Act:

a. Forward to the complainant, Edward N.

Davenport, a written communication extending to him the right to inter the bodies of Negro or other persons not of the white or Caucasian race, in any of the burial lots owned by the said Edward N.

Davenport and his wife, Beatrice, and located in Whitemarsh Memorial Park. A copy of such written communication shall be transmitted to the Commission by the respondent;

b. Instruct all of the respondent's employes, in writing, to sell burial lots in Whitemarsh Memorial Park to Negroes desiring to purchase same in

the same manner as to white customers, and to permit the interment of the bodies of Negroes and other persons not of the white or Caucasian race in Whitemarsh Memorial Park or in any other public cemetery owned, operated or controlled by the respondent anywhere in the Commonwealth of Pennsylvania. Copies of such written instructions, signed by all of respondent's employes and acknowledging receipt and understanding thereof shall be transmitted to the Commission by the respondent;

c. File a Statement of Policy with the Commission, adopted by its Board of Directors, signed by the respondent's president and secretary, acknowledging that it will not henceforth restrict interment of bodies in Whitemarsh Memorial Park or in any other public cemetery owned, operated or controlled by respondent anywhere in Pennsylvania, to persons of the white or Caucasian race only; and that it will alter, amend or delete those portions of its Rules and Regulations, Agreement of Sale form, Deed form, and all other printed forms relating to the promotion or sale of burial lots in any of such cemeteries which are inconsistent with said Statement of Policy;

d. Post and maintain in a conspicuous place at the office of the respondent, where persons entering such office for the purpose of purchasing burial lots from the respondent may easily see it, a copy of the Commission's public accommodations poster, furnished by the Commission; and

e. Notify the Pennsylvania Human Relations Commission at its offices at No. 1401 Labor and Industry Building, Harrisburg, Pennsylvania, 17120, in writing, within fifteen (15) days after service of this Final Order, as to the steps the respondent has taken to comply therewith.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By *Harry Boyer*  
HARRY BOYER, Chairman

ATTEST :

*Edward M. Green*  
EDWARD M. GREEN  
Secretary



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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-vs- : DOCKET NO. P-403  
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EDWARD N. DAVENPORT :  
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OPINION, INCLUDING FINDINGS  
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The Commission itself instituted the complaint in Docket No. P-403, charging that the respondent cemetery's rules and its pieces of literature contain illegal racial restrictions, limiting interment in its cemetery, Whitemarsh Memorial Park, to the bodies of persons of the white or Caucasian race only.

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The facts are not in dispute and have been stipulated by David H. Rosenbluth, Esq., attorney for the respondent, and Nathan Agran, Esq., General Counsel for the Commission, representing both complainants. Such stipulation was submitted at the public hearing in the form of an Agreed Statement of Facts, in accordance with the provisions of Section 105.20 of the Commission's Regulations.

The respondent has filed verified Answers to the two complaints, admitting the facts but denying that the respondent has committed unlawful discriminatory practices under the provisions of the Pennsylvania Human Relations Act (hereinafter referred to as "Act").

The question involved is a fairly narrow one: "Is the Whitemarsh Memorial Park a place of public accommodation within the meaning of Section 4(1) of the Act?" An affirmative answer requires a finding that the respondent is in violation of the Act.

Briefs of law were submitted to the Hearing Commissioners by both attorneys and have been carefully considered by the Hearing Commissioners, who now make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The respondent, Whitemarsh Memorial Park Cemeteries Co., is a Pennsylvania corporation with principal place of business located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania.

2. The respondent, Whitemarsh Memorial Park Cemeteries Co., is not church affiliated.

3. The respondent commenced operation as a cemetery in or about the year 1927, and from said time to and including the present time, has owned and operated the cemetery known as "Whitemarsh Memorial Park" at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania.

4. The present officers of the respondent corporation are George E. Meagher, Jr., President; Ernest Behrens, Vice-President; and La Verne Meagher, Secretary-Treasurer.

5. The respondent maintains and operates said cemetery for the burial of dead human beings and in connection therewith, has laid out land in suitable burial lots and has sold said lots for burial purposes only to the general public through advertisements and through a sales organization.

6. The respondent has inserted express language in its Regulations, in its Agreement of Sale form, and in its Deed form, relating to the said cemetery or burial park

known as "Whitemarsh Memorial Park", as follows:

(a) Regulations ---

"Rule 3-R - Interment for Members of Caucasian Race:- No interment of any body or the cremated remains of any body other than that of a human being of the White race and/or the Caucasian race shall be permitted in the cemetery..."

(b) Agreement of Sale ---

"... The Purchaser agrees to buy and the Company agrees to obtain for the benefit of and sell to the Purchaser, his heirs or assigns, in accordance with the terms hereof, the merchandise, interment spaces for the exclusive right of interment of members of the Caucasian race, and services hereinafter enumerated and designated for which the Purchaser agrees to pay to the Company the sum of ....."

(c) Deed ---

".... That this conveyance, and all right, title and interest hereby granted in the property above described, is subject to all laws and ordinances, and to the following conditions, reservations, restrictions and rules and regulations, and the Grantee, by the acceptance of this indenture, covenants and agrees that:

(a) No bodies, except those of persons of the White or Caucasian race, shall be interred in said property, or portion thereof."

7. Edward N. Davenport, complainant named in Docket No. P-416, is a funeral director with principal place of business in Norristown, Montgomery County, Pennsylvania, who, together with his wife, Beatrice, is the owner of cemetery burial lots in the said Whitemarsh Memorial Park, being Sections 464, 465, 467 and 468 of Block "B"; Sections 4671, 4672, 4673, 4674, 4704 and 4708 of Block "J"; Sections 4911, 4976, 4977, 4978, 4979, 4990, 5038 and 5060 of Block "K"; Sections 6011.

6017, 6018 and 6120 of Block "L"; and Sections 482, 483, 484, 488, 489, 490 and 532 of Block "U".

8. The said Edward N. Davenport is a licensed funeral director of the Commonwealth of Pennsylvania.

9. The said Edward N. Davenport purchased the burial lots thus owned by him from a previous lot owner and acquired title to said burial lots with the full knowledge and consent of the respondent.

10. The respondent has refused and still refuses to permit the said Edward N. Davenport to inter the remains of any Negro human being in any of the burial lots thus owned by him and situated in Whitemarsh Memorial Park.

11. In recent years, the respondent has established and is now operating a cemetery adjoining the Whitemarsh Memorial Park, known as "Veterans Memorial Garden of Whitemarsh Memorial Park" in which the respondent permits the remains of all persons, without regard to their race, religion or national origin, to be interred; and the Agreement of Sale, Deed and other forms pertaining to the purchase of burial lots in said new cemetery do not contain any restrictions limiting interment therein to persons of the white or Caucasian race only.

#### CONCLUSIONS OF LAW

1. The respondent, Whitemarsh Memorial Park Cemeteries Co., as the operator of Whitemarsh Memorial Park, Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania, a cemetery for the interment of dead human bodies, is a proprietor of a place of public accommodation within the meaning of that term as defined in Section 4(1) of the Act.

2. By refusing to permit the bodies of Negroes or other persons not of the white or Caucasian race to be interred in Whitemarsh Memorial Park, the respondent has committed unlawful discriminatory practices in violation of Section 5(1) (1) of the Act.

3. The respondent, in refusing permission to the complainant, Edward N. Davenport, to bury or inter Negroes in burial lots owned by him in the respondent's cemetery, Whitemarsh Memorial Park, for the reason that said Negroes were not white persons, has committed unlawful discriminatory practices under Section 5(1) (1) of the Act.

4. Respondent, in maintaining a rule and regulation to the effect that interment in its cemetery, Whitemarsh Memorial Park, shall be limited to the bodies of human beings of the white or Caucasian race, has committed an unlawful discriminatory practice in violation of Section 5(1) (2) of the Act.

5. Respondent, in publishing and refusing to delete from its Agreement of Sale and Deed forms pertaining to the sale of burial lots in its cemetery, Whitemarsh Memorial Park, a notice and announcement that interment therein shall be restricted to bodies of human beings of the white or Caucasian race, has committed unlawful discriminatory practices in violation of Section 5(1) (2) of the Act.

The Hearing Commissioners are unanimously of the opinion that the Commission should enter an order against the respondent, Whitemarsh Memorial Park Cemeteries Co., requiring it to cease and desist from refusing to permit the

bodies of other than white or Caucasian persons to be buried in its cemetery, Whitemarsh Memorial Park.

The common, ordinary meaning of "accommodation" as set forth in Webster's Third New International Dictionary is, "Something that is supplied for convenience or to satisfy a need". To decide that a cemetery or burial park is something other than an accommodation is to ignore what must be taken as a verity by any reasonable or fair-minded person. A cemetery is as much needed for the convenience of the public as is a restaurant, a barber shop or any other place of public accommodation being dealt with by the Commission. Indeed, it is probably more of a necessity to the average family than most of ~~the~~ places of public accommodations which are enumerated in the Act.

That the cemetery in question, Whitemarsh Memorial Park, is "public" is not being disputed and has been stipulated by both attorneys. The Commission has in the past and will continue to consider any cemetery or any section of a cemetery which is reserved for religious or fraternal groups as "private" and therefore exempt from the public accommodations provisions of the Act. But the Whitemarsh Memorial Park is not such a cemetery and is open to the general public through advertisements and a sales organization.

It is significant that the Legislature, when it enacted the Pennsylvania Human Relations Act in 1961, used almost exactly the same definition of "a place of public accommodation, resort or amusement" as that set forth in Sections 653 and 654 of the Penal Code known as the Civil Rights Act of 1939. The

important change enacted in 1961 was the addition of the general language defining a place of public accommodation as "any place which is open to, accepts or solicits the patronage of the general public, including but not limited to ...."

The Hearing Commissioners are also cognizant of the circumstances under which the public accommodations provisions of the Act were passed by the Legislature in 1961, when this nation and this Commonwealth were witnessing a social revolution of a magnitude never previously experienced. The Whitemarsh Memorial Park is a cemetery which is open to and solicits the patronage of the general public, despite the fact that it does not presently accept the patronage of the Negro public or that of any segment of the public other than the white public.

Of similar significance is the fact that, unlike many similar statutes, Section 12 of the Pennsylvania Act provides, "The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply".

The primary purpose of the Human Relations Act is to afford to all persons, regardless of their race, religion or national origin, equal advantages and opportunities, especially in connection with places which are advertised and open to the public at large and which are not strictly private in character. To permit the respondent to continue in its present practices at the Whitemarsh Memorial Park would be tantamount to permitting it to continue to deny basic advantages and



opportunities to Negroes and other persons who are not of the white or Caucasian race.

The Commission must give full credence to the express language of the Legislature which defined a place of public accommodation as "any place which is open to, accepts or solicits the patronage of the general public..." A cemetery which advertises the sale of its burial lots, as does the respondent, to the general public, must be construed as being a place of public accommodation.

The Hearing Commissioners are also mindful of the important rule of law announced in the famous case of Shelley v. Kraemer, 334 U.S. 1 (1948) that the judicial enforcement by state courts of covenants restricting the use and occupancy of real property to persons of the Caucasian Race is in violation of the "equal protection" clause of the 14th Amendment to the United States Constitution. This basic rule is as much applicable to cemetery lots as to any other real property interest.

At the hearing of these cases, statements were made by the respondent, through its president, a director and controlling shareholder, Mr. George E. Meagher, Jr., and through its attorney, to the effect that the respondent's strict adherence to the provisions of the restrictive covenants set forth in the Agreement of Sale and Deed is for the protection of the owners of burial lots in Whitemarsh Memorial Park who purchased such lots before the enactment of the Human Relations Act. We cannot agree that this is a valid or legal reason for continuing practices which are labeled as "unlawful discriminatory practices" in the said Act.

The respondent is obligated to comply with the applicable provisions of the Human Relations Act, because of the express provisions set forth in each deed conveying title to such burial lots, as follows:

"That this conveyance, and all right, title and interest hereby granted in the property above described, is subject to all laws and ordinances, and to the following conditions ...." (underlining supplied for emphasis)

The owners of such burial lots must accept and abide by the provisions of an act of assembly of the Commonwealth. The language of Mr. Justice Dooling, in the case of Long v. Mountain View Cemetery Assn., 130 Cal. App. 2d 328, 278 P. 2d 945 (1955), cited in each of the briefs of law submitted by the attorneys, is particularly pertinent:

"....I cannot believe that a man's mortal remains will disintegrate any less peaceably because of the close proximity of the body of a member of another race, and in that inevitable disintegration I am sure that the pigmentation of the skin cannot long endure. It strikes me that the carrying of racial discrimination into the burial grounds is a particularly stupid form of human arrogance and intolerance. If life does not do so, the universal fellowship of death should teach humility. The good people who insist on the racial segregation of what is mortal in man may be shocked to learn when their own lives end, that God has reserved no racially exclusive position for them in the hereafter."

For the several reasons set forth, the Hearing Commissioners recommend that the Commission enter a cease and

desist order against Whitemarsh Memorial Park Cemeteries Co., requiring it to discontinue its present practices of restricting interment, in its cemetery known as Whitemarsh Memorial Park, to persons of the white or Caucasian race only.

/s/ Joseph X. Yaffe  
JOSEPH X. YAPPE, Presiding Hearing Commissioner

/s/ Samuel H. Daroff  
SAMUEL H. DAROFF, Hearing Commissioner

/s/ Robert Johnson Smith  
ROBERT JOHNSON SMITH, Hearing Commissioner

COMMISSION 'S DECISION

AND NOW, May 31, 1966, upon recommendation of the Hearing Commissioners, upon all of the evidence at the public hearing of this case, and in consideration of the findings of fact and conclusions of law by the Hearing Commissioners, the Pennsylvania Human Relations Commission unanimously finds and determines:

1. The Commission has jurisdiction over the respondent, over the subject matter of this proceeding and over the instant complaints.

2. The Whitemarsh Memorial Park, a cemetery located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania, and operated by the respondent, Whitemarsh Memorial Park Cemeteries Co., a Pennsylvania corporation, is a place of public accommodation which is open to and which solicits

the patronage of the general public, within the meaning of that term as it is defined in Section 4(1) of the Pennsylvania Human Relations Act.

3. The respondent has committed unlawful discriminatory practices in violation of Sections 5(i)(1) and 5 (i)(2) of the Pennsylvania Human Relations Act, in that

(a) it has refused, withheld from and denied, and still refuses, withholds from and denies to Negroes, because of their race, the accommodations, advantages, facilities and privileges of its cemetery, Whitemarsh Memorial Park, a place of public accommodation,

(b) it has refused and still refuses to permit the complainant, Edward N. Davenport, a funeral director, to inter the bodies of Negroes in burial lots owned by said complainant in the Whitemarsh Memorial Park, a cemetery and place of public accommodation which is owned and operated by the respondent, and

(c) it has published, circulated and issued printed notices and communications to the effect that the accommodations, advantages, facilities and privileges of Whitemarsh Memorial Park are available only for the interment of persons of the white or Caucasian race, and that the patronage thereof of Negroes is unwelcome, objectionable, not acceptable, desired or solicited.

FINAL ORDER

AND NOW, this 31st day of May, 1966, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Commission's Decision, and pursuant to the provisions of Section 9 of the Pennsylvania Human Relations Act, it is hereby

ORDERED, by the Pennsylvania Human Relations Commission:

1. That the respondent, Whitemarsh Memorial Park Cemeteries Co., its officers, managers, agents and employes, shall cease and desist from refusing to permit the bodies of Negroes to be interred and from limiting and restricting the use of its burial lots to the bodies of persons of the white or Caucasian race only, in the cemetery known as Whitemarsh Memorial Park, located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania, or in any other public cemetery now or hereafter owned, operated or controlled by the respondent anywhere in the Commonwealth of Pennsylvania.

2. That the respondent, Whitemarsh Memorial Park Cemeteries Co., its officers, managers, agents and employes, shall cease and desist from refusing or denying to the complainant, Edward N. Davenport, a funeral director, the right to inter the bodies of Negroes in any burial lots owned by the said Edward N. Davenport in Whitemarsh Memorial Park, the cemetery owned and operated by the respondent and located at Horsham Road and Limekiln Pike, Prospectville, Montgomery County, Pennsylvania.

3. That the respondent, Whitemarsh Memorial Park Cemeteries Co., its officers, managers, agents and employes, shall cease and desist from publishing, circulating or issuing any printed statements or notices, in its Rules and Regulations, Agreement of Sale forms, Deed forms, or in any other forms used in connection with the promotion or sale of burial lots located in Whitemarsh Memorial Park or in any other public cemetery or burial park now or hereafter owned, operated or controlled by the respondent anywhere in the Commonwealth of Pennsylvania, to the effect that interment therein is restricted to the bodies of persons of the white or Caucasian race only.

4. That the respondent, Whitemarsh Memorial Park Cemeteries Co., through its officers, managers, agents and employes, shall take the following affirmative action, which in the judgment of the Commission, will effectuate the purposes of the Pennsylvania Human Relations Act:

a. Forward to the complainant, Edward N. Davenport, a written communication extending to him the right to inter the bodies of Negro or other persons not of the white or Caucasian race, in any of the burial lots owned by the said Edward N. Davenport and his wife, Beatrice, and located in Whitemarsh Memorial Park. A copy of such written communication shall be transmitted to the Commission by the respondent;

b. Instruct all of the respondent's employes, in writing, to sell burial lots in Whitemarsh Memorial Park to Negroes desiring to purchase same in

the same manner as to white customers, and to permit the interment of the bodies of Negroes and other persons not of the white or Caucasian race in Whitemarsh Memorial Park or in any other public cemetery owned, operated or controlled by the respondent anywhere in the Commonwealth of Pennsylvania. Copies of such written instructions, signed by all of respondent's employes and acknowledging receipt and understanding thereof shall be transmitted to the Commission by the respondent;

c. File a Statement of Policy with the Commission, adopted by its Board of Directors, signed by the respondent's president and secretary, acknowledging that it will not henceforth restrict interment of bodies in Whitemarsh Memorial Park or in any other public cemetery owned, operated or controlled by respondent anywhere in Pennsylvania, to persons of the white or Caucasian race only; and that it will alter, amend or delete those portions of its Rules and Regulations, Agreement of Sale form, Deed form, and all other printed forms relating to the promotion or sale or burial lots in any of such cemeteries which are inconsistent with said Statement of Policy;

d. Post and maintain in a conspicuous place at the office of the respondent, where persons entering such office for the purpose of purchasing burial lots from the respondent may easily see it, a copy of the Commission's public accommodations poster, furnished by the Commission; and

e. Notify the Pennsylvania Human Relations Commission at its offices at No. 1401 Labor and Industry Building, Harrisburg, Pennsylvania, 17120, in writing, within fifteen (15) days after service of this Final Order, as to the steps the respondent has taken to comply therewith.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By /s/ Harry Boyer  
HARRY BOYER, Chairman

ATTEST :

/s/ Edward M. Green  
EDWARD M. GREEN  
Secretary