

6-18-75

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for)
her minor daughter, NATALIE)
THUNELL and KATHLEEN L. ARTURE,)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)

MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

FINDINGS OF FACT

1. Complainant Carol B. Craig, an adult individual, is the parent and natural guardian of Natalie Thunell, minor complainant; and Kathleen L. Arture, an adult individual, is the parent and natural guardian of Lisa Arture, minor complainant. Complainants are citizens and residents of the Commonwealth of Pennsylvania.

2. Respondents Mars Community Boys Baseball Association, hereinafter referred to as "Association" and Hank Golebiewski, President, located in Mars, Allegheny County, Pennsylvania, operate male community baseball teams for youth between the ages of 8 to 18.

3. Carol B. Craig filed a complaint with the Pennsylvania Human Relations Commission, hereinafter referred to as "Commission" on behalf of her daughter Natalie Thunell on May 5, 1975.

4. Kathleen L. Arture filed a complaint with the Commission on behalf of her daughter Lisa Arture on April 23, 1975.

5. Complainants' complaints allege that Respondents violated Section 3 and Section 5 (i)(1) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. by denying to minor complainants membership and participation in the Association.

6. A public hearing was convened before the Chairperson of the Commission Hearing Panel on June 9, 1977, in the offices of the Commission, 355 Fifth Avenue, Pittsburgh, Pennsylvania.

7. Respondent and Counsel for complainants signed a waiver of their right to have three (3) commissioners present to conduct the above public hearing.

8. Respondent Hank Golebiewski voluntarily represented himself as President of Association, and the Association Respondent.

9. Counsel for complainants and respondent entered into a written Stipulation which was offered and admitted into the record as the sole evidence presented at hearing. The terms of said Stipulation are incorporated herein and made a part of these findings.

10. In March, 1975, minor complainants attempted to join Association by paying the required \$5.00 registration fee.

11. On April 9, 1975, at an Association meeting, Respondents decided not to allow minor complainants to join the Association's baseball program solely because of their sex, female.

12. Respondent has maintained a policy and practice of discrimination against female applicants based solely on sex in violation of Sections 3 and 5 (i)(1) of the Pennsylvania Human Relations Act.

13. Respondents' denial to minor complainants of membership and participation in its baseball program constitutes sex discrimination in violation of Sections 3 and 5 (i)(1) of the Pennsylvania Human Relations Act.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for her)
minor daughter, NATALIE)
THUNELL, and KATHLEEN L.)
ARTURE, for her minor daughter,)
LISA ARTURE,)
Complainants) Docket Nos. P-1114 and
VS.) P-1115
MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)
Respondents.)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainants, the Respondent, and the subject matter of the Complaints in this action at Docket Nos. P-1114 and P-1115, pursuant to Sections 3 and 5 (i)(1) of the Pennsylvania Human Relations Act, in which Complainants seek relief from discrimination in denial to them because of sex the accommodations, facilities or privileges of Respondent's baseball association which is made unlawful by §5(i)(1) of the Act.

2. Respondent received proper notice of this Complaint and proper notice and opportunity for public hearing as required by §9 of the Pennsylvania Human Relations Act, 43 P.S. §959.

3. Respondent is a place of public accommodation within the meaning of §4 and §5(i)(1) of the Pennsylvania Human Relations Act, 43 P.S. §954 and §955.

4. Respondent's maintenance of sex segregated admissions, policies and practices to its baseball association by refusing to admit females constitutes discrimination on the basis of sex in violation of Section §5(i)(1) of the Act.

5. Membership and participation in the association is based solely on sex.

6. Respondent has maintained an intentional policy and practice in discriminating against females on the basis of sex in violation of Section §5(i)(1) of the Act.

7. Respondent has failed to establish that females are physically incapable of engaging in the baseball games operated by respondent's association.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for her)
minor daughter, NATALIE)
THUNELL and KATHLEEN ARTURE)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)


MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

RECOMMENDATION OF HEARING COMMISSIONER

AND NOW, to wit: this 25th day of September , 1977,
upon consideration of all the evidence presented at the public
hearing in the above entitled case, and pursuant to the Findings
of Fact and Conclusion of Law, the Hearing Commissioner recommends
to the entire Commission that an Order be entered against the
Respondents holding that the Respondents violated Sections 3 and
5(i)(1) of the Pennsylvania Human Relations Act and providing for
the appropriate relief.


DORIS A. SMITH, CHAIRPERSON
HEARING PANEL

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG for her)
minor daughter, NATALIE)
THUNELL and KATHLEEN L. ARTURE,)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)

MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

DECISION OF THE COMMISSION

AND NOW, TO WIT: this 25th day of September , 1977,
upon recommendation of the Public Hearing Commissioner and upon
the evidence of record in this case, and consideration of the
Findings of Fact and Conclusions of Law, the Pennsylvania Human
Relations Commission finds that Respondents engaged in an unlawful
discriminatory practice in violation of Sections 3 and 5(i)(1) of
the Pennsylvania Human Relations Act, in that Respondents dis-
criminated against minor complainants because of their female sex
in denying to them membership and participation in the Association's
baseball program operated for male youth.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Joseph X. Yaffe
JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

Elizabeth M. Scott
ELIZABETH M. SCOTT, SECRETARY

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for her)
minor daughter, NATALIE)
THUNELL and KATHLEEN L. ARTURE,)
for her minor daughter, LISA)
ARTURE,)
)
Complainants,) Docket Nos. P-1114 and
) P-1115
VS.)
)
MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)
)
Respondents.)

FINAL ORDER AND DECREE

1. That Respondent shall conduct its Admissions Procedure or practice in accordance with the Pennsylvania Human Relations Act, Act of October 27, 1975, P.L. 744, 43 P.S. §951 et seq., as amended.
2. Respondent shall cease and desist from refusing to admit females who apply for membership and participation in Respondent's baseball association.
3. That Respondent offer to Complainants the opportunity to re-apply for admission and participation in its baseball association.
4. Respondent shall submit to the Commission, semi-annual reports containing names and ages of female applicants and admissions to membership and participation in Respondent's Association for a

JUL 9 3 31 PM '78

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Petitioner

v.

MARS COMMUNITY BOYS BASEBALL
ASSOCIATION et al.,

Respondents

: IN THE COMMONWEALTH COURT

: OF PENNSYLVANIA

:

:

: NO. 1358 C. D. 1978

MEMORANDUM OPINION

During April and May of 1975 the Pennsylvania Human Relations Commission (Commission) received complaints filed by two mothers on behalf of their minor daughters alleging that the Mars Community Boys Baseball Association (Mars) had violated the Pennsylvania Human Relations Act. Act of October 27, 1955, P. L. 744, as amended, 43 P.S. §951 et seq. (Act). The Commission conducted an investigation of the complaints and determined that probable cause existed for crediting the allegations of the complaints and endeavored to eliminate the alleged unlawful discriminatory practice complained of by conference, conciliation and persuasion. Following a public hearing the Commission made a conclusion of law that Mar's maintenance of sex segregated admissions, policies and practices to its baseball association by refusing to admit females constituted discrimination on the basis of sex in violation of Section 5(i)(1) of the Act and entered a final order and decree under date of October 5, 1977. The Commission has applied to this Court for an order to enforce its final order as provided for by Section 10 of the Act. 43 P.S. §960.

However, we cannot grant the Commission's application for enforcement because Section 5(i)(1) of the Act, 43 P.S. §955(i)(1), does not include sex as an unpermitted reason for denying, refusing or withholding from any person any of the accommodations, advantages, facilities or privileges of any place of public accommodation, resort or amusement.

Although we are mindful of the legislative directive to construe liberally the provisions of the Act for the accomplishment of the purposes thereof, 43 P.S. §962(a), we cannot rewrite the Act by the addition of words which the legislature may well have omitted by design and intent, rather than mere oversight. This is especially so where the section under consideration has been amended on several occasions without the alleged missing word being inserted. Our role is to interpret and not legislate.

Accordingly, we make the following

O R D E R

NOW, this 30th day of June, 1978, after hearing, the Pennsylvania Human Relations Commission's application for an order to enforce a final order and decree is hereby denied and the Commission's final order and decree of October 5, 1977 entered at its Docket Nos. P-1114 and P-1115 is hereby set aside.

BY THE COURT,

Wm. E. Miller

J.

CERTIFIED FROM THE RECORD

JUN 30 1978

Francis C. Barbush
CHIEF CLERK

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Petitioner,

vs.

No. _____ C.D. 1978

MARS COMMUNITY BOYS
BASEBALL ASSOCIATION,
THOMAS McKEON, PRESIDENT,
Respondent

NOTICE TO DEFEND

TO: MARS COMMUNITY BOYS BASEBALL
ASSOCIATION
HANK GOLEBIEWSKI, PRESIDENT
8 South Drive
Valencia, Pennsylvania 16059

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Petitioner,

vs.

MARS COMMUNITY BOYS
BASEBALL ASSOCIATION,
THOMAS McKEON, PRESIDENT,
Respondent

No. _____ C.D. 1978

APPLICATION FOR ORDER TO ENFORCE
FINAL ORDER AND DECREE

TO THE HONORABLE JUDGES OF SAID COURT:

AND NOW, this 24 day of May, 1978, comes the Pennsylvania Human Relations Commission by Marc Kranson, Esquire, Assistant General Counsel, pursuant to Pa. R.A.P. 123, and respectfully represents as follows:

1. This action is brought pursuant to section 10 of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §960 and sections 401 (a)(3) and 508 (a)(87) of the Appellate Court Jurisdiction Act of 1970, Act of July 31, 1970, P.L. 673, No. 233, 17 P.S. §221.401 (a)(3) 211.508 (a)(87) to enforce a Final Order duly issued by the Commission.

2. Petitioner is the Pennsylvania Human Relations Commission, herinafter referred to as the "Commission", an administrative agency of the Commonwealth of Pennsylvania, established and governed by the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq., herinafter referred to as the "ACT".

3. Respondent is the Mars, Pennsylvania, Community Boys Baseball Association and Hank Golebiewski, President which operates baseball teams for males, ages eight (8) to eighteen (18).

4. On May 5, 1975, Carol B. Craig filed a complaint on behalf of her minor daughter, Natalie Thunell, with the Commission at Docket No. P-1114 alleging that Respondents had violated Sections 3 and 5 (i)(1) of the ACT. A copy of this complaint is attached to this Application, marked Exhibit "A", and incorporated by reference.

5. On April 23, 1975, Kathleen L. Arture filed a complaint on behalf of her minor daughter, Lisa Arture, with the Commission at Docket No. P-1115 alleging that Respondents had violated Sections 3 and 5 (i)(1) of the ACT. A copy of this complaint is attached to this Application, marked Exhibit "B", and incorporated by reference.

6. Following an investigation of the afore-mentioned complaints, the Commission determined that probable cause existed for crediting the allegations of the complaints and endeavored to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion.

7. On July 27, 1975, the Commission voted to hold a Public Hearing in the aforementioned complaints.

8. On June 9, 1977, the afore-mentioned Public Hearing was convened before the Chairperson of the Commission Hearing Panel in the offices of the Commission, 355 Fifth

Avenue, Pittsburgh, Pennsylvania, 15222.

9. On September 25, 1977, the Commission found that Respondents engaged in an unlawful discriminatory practice in violation of Sections 3 and 5 (i)(1) of the ACT. A copy of the Commission's Findings of Fact, Conclusions of Law, Recommendation of Hearing Commissioner, and Decision of the Commission, is attached to this Application, marked Exhibit "C" and incorporated by reference.

10. On September 25, 1977 the Commission issued and caused to be served on Respondents an Order requiring Respondents inter alia., to cease and desist from their unlawful discriminatory practice. A copy of this Order is attached to this Application, marked Exhibit "D", and incorporated by reference.

11. By letter dated October 24, 1977, Respondent by its President, Hank Golebiewski, informed the Commission that the Association would not comply with the Final Order of the Commission. A copy of this letter is attached to this Application, marked Exhibit "E", and incorporated by reference.

12. On November 27, 1977, the Commission denied Respondent's request to reverse the Final Order issued to the Association.

13. On or about February 13, 1978, Carol B. Craig received from Respondent an official registration notice and application for the 1978 season. This notice indicates that only boys are eligible to participate in the activities of

Respondent Association, in direct contravention of the Final Order and Decree duly issued by the Commission. A copy of this Notice is attached to this Application, marked Exhibit "F" and incorporated by reference.

14. Petitioner is authorized to issue the aforesaid Final Order by Section 9 of the ACT (43 P.S. §959).

WHEREFORE, the Pennsylvania Human Relations Commission petitions this Honorable Court for an Order compelling Respondents, Mars Community Boys Baseball Association and Hank Golebiewski, President, to comply fully with the Final Order and Decree issued by the Commission as follows:

1. That Respondent shall conduct its Admissions Procedure or practice in accordance with the Pennsylvania Human Relations Act, Act of October 27, 1975 P.L. 744, 43 P.S. §951 et seq., as amended.

2. Respondent shall cease and desist from refusing to admit females who apply for membership and participation in Respondent's baseball association.

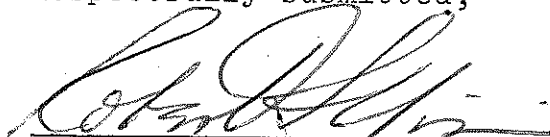
3. That Respondent offer to Complainants the opportunity to re-apply for admission and participation in its baseball association.

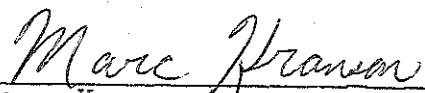
4. Respondent shall submit to the Commission, semi-annual reports containing names and ages of female applicants and admission to membership and participation in Respondent's Association for a period of two years. Respondent shall include in its reports, names of females who actively participated in

Respondent's baseball games for the period reported.

5. Respondent shall take reasonable steps to insure that Complainants are not subjected to harrassment or discrimination by reason of their filing the above captioned complaints and that their performance shall be judged on the same criteria as male participants.

Respectfully submitted,


Robert S. Mirin
General Counsel


Marc Kranson
Assistant General Counsel
Pennsylvania Human Relations
Commission

Date: May 24, 1978

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Petitioner,

vs.

No. _____ C.D. 1978

MARS COMMUNITY BOYS
BASEBALL ASSOCIATION,
THOMAS McKEON, PRESIDENT,
Respondent

CERTIFICATION OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Service by First Class
Mail Addressed as Follows:

Mars Community Boys'
Baseball Association
Henry Golebiewski, President
8 South Drive
Valencia, Pennsylvania 16059
(Respondents)

Dated: May 24, 1978

Marc Kranson
Marc Kranson, Esq.
Assistant General Counsel
Pennsylvania Human Relations
Commission
Suite 1210 - 355 Fifth Avenue
Pittsburgh, Pennsylvania 15222
(412) 565-7977

COMPLAINT
MRS. CAROL B. CRAIG for her minor
daughter, NATALIE THUNELL
(Complainant)

(Complainant)

(Complainant)

(Complainant)

V.

MARS COMMUNITY BOYS BASEBALL ASSOCIATION
THOMAS McKEON, PRESIDENT
(Respondent)

(Respondent)

(Respondent)

(Respondent)



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
HUMAN RELATIONS COMMISSION

COMPLAINT

DOCKET NO. P-1114

1. The Complainant(s) herein (is) (are):

(Name) Mrs. Carol B. Craig for her minor daughter, Natalie Thunell,
(Address) R.D. #2, Logan Road, Valencia, Pennsylvania 16059
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____

2. The Respondent(s) herein (is) (are):

(Name) Mars Community Boys Baseball Association, Thomas McKeon,
(Address) President, Mars, Pennsylvania 16046
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____

(Name) _____
(Address) _____

4. The allegations in paragraph 3 hereof constitute(s) an unlawful discriminatory practice or unlawful practice and is in violation of:

- Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended). Section 5 Subsection(s) 3 and 5(i) (1)
- Pennsylvania Fair Educational Opportunities Act (Act of July 17, 1961, P.L. 776 as amended). Section 4 Subsection(s) _____
- Act number 78 of 1973 _____ effective October 10, 1973
- Section - Subsection(s) _____

5. The Complainant(s) allege(s) that the alleged unlawful discriminatory practice or unlawful discriminatory practices:

is/are of a continuing nature which has/have persisted up to and including the present time.

6. No other action based on the aforesaid allegations has been instituted by the Complainant in any Court or before any other Commission within the Commonwealth of Pennsylvania except as follows:

None

7. The Complainant(s) pray that the Respondent(s) be required

- (a) to make the complainant(s) whole, including but not limited to compensatory and/or punitive awards such as back pay and "out of pocket expenses."
- (b) to eliminate all unlawful discriminatory practice(s) and procedure(s).
- (c) to remedy the discriminatory effect of past practice(s) and procedure(s).
- (d) to take further affirmative action necessary and appropriate to remedy the violations complained of herein.
- (e) such further relief as the Commission deems necessary and appropriate.

COMMONWEALTH OF PENNSYLVANIA

:
SS

COUNTY OF

MRS. CAROL CRAIG, for her minor daughter, NATALIE THUNELL

_____, of full age, being duly sworn according to law deposes and says: that she is the Complainant herein; that she has read the foregoing complaint and knows the content thereof; that to the best of her knowledge, information and belief the facts alleged therein are true.

X Carol Craig
Signature of Complainant

Sworn to and subscribed :

before me this 3rd day :

Signature of Complainant

of May, 1975 :

Signature of Complainant

Linda L. Starr
Notary Public
My Commission Expires
April 17, 1978

Signature of Complainant

LINDA L. STARR, NOTARY PUBLIC
DOLESEX TOWNSHIP, BUTLER COUNTY
MY COMMISSION EXPIRES APRIL 17, 1978
Member, Pennsylvania Association of Notaries

I hereby certify that I have this day served the foregoing document upon
all parties of record in this proceeding in accordance with the requirements of
1 Pa. Code § 33.32 (relating to service by a participant).

Dated at this 23rd day of May, 1975.

J. M. Farkwood
(Signature)

Of Counsel for

MRS. CAROL B. CRAIG for her minor
daughter, NATALIE THUNELL
(Complainant)

(Complainant)

(Complainant)

(Complainant)



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
HUMAN RELATIONS COMMISSION

v.

MARS COMMUNITY BOYS BASEBALL ASSOCIATION
THOMAS MCKEON, PRESIDENT
(Respondent)

COMPLAINT

DOCKET NO. P-1114

(Respondent)

(Respondent)

(Respondent)

1. The Complainant(s) herein (is) (are):

(Name) Mrs. Carol B. Craig for her minor daughter, Natalie Thunell,
(Address) R.D. #2, Logan Road, Valencia, Pennsylvania 16059
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____

2. The Respondent(s) herein (is) (are):

(Name) Mars Community Boys Baseball Association, Thomas McKeon,
(Address) President, Mars, Pennsylvania 16046
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____
(City - Borough - Township - County - Zip Code)

(Name) _____
(Address) _____

(Name) _____
(Address) _____

4. The allegations in paragraph 3 hereof constitute(s) an unlawful discriminatory practice or unlawful practice and is in violation of:

- Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended). Section 5 Subsection(s) 3 and 5(i) (1)
- Pennsylvania Fair Educational Opportunities Act (Act of July 17, 1961, P.L. 776 as amended). Section 4 Subsection(s) _____
- Act number 78 of 1973 _____ effective October 10, 1973
- Section - Subsection(s) _____

5. The Complainant(s) allege(s) that the alleged unlawful discriminatory practice or unlawful discriminatory practices:

is/are of a continuing nature which has/have persisted up to and including the present time.

6. No other action based on the aforesaid allegations has been instituted by the Complainant in any Court or before any other Commission within the Commonwealth of Pennsylvania except as follows:

None

7. The Complainant(s) pray that the Respondent(s) be required

- (a) to make the complainant(s) whole, including but not limited to compensatory and/or punitive awards such as back pay and "out of pocket expenses."
- (b) to eliminate all unlawful discriminatory practice(s) and procedure(s).
- (c) to remedy the discriminatory effect of past practice(s) and procedure(s).
- (d) to take further affirmative action necessary and appropriate to remedy the violations complained of herein.
- (e) such further relief as the Commission deems necessary and appropriate.

COMMONWEALTH OF PENNSYLVANIA :
 :
 COUNTY OF :
 :
 MRS. CAROL CRAIG, for her minor

daughter, NATALIE THUNELL, of full age, being duly sworn according to law deposes and says: that she is the Complainant herein; that she has read the foregoing complaint and knows the content thereof; that to the best of her knowledge, information and belief the facts alleged therein are true.

X Carol Craig
Signature of Complainant

Sworn to and subscribed :

before me this 5th day :

of May, 19 75 :

Signature of Complainant

Signature of Complainant

Signature of Complainant

Linda L. Starr
Notary Public
My Commission Expires
April 17, 1978

LINDA L. STARR, NOTARY PUBLIC
MIDDLESEX TOWNSHIP, BUTLER COUNTY
MY COMMISSION EXPIRES APRIL 17, 1978
Member, Pennsylvania Association of Notaries

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of

1 Pa. Code § 33.32 (relating to service by a participant).

Dated at this 23rd day of May, 1975.

J. M. Lockwood
(Signature)

Of Counsel for

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for.)
her minor daughter, NATALIE)
THUNELL and KATHLEEN L. ARTURE,)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)

MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

FINDINGS OF FACT

1. Complainant Carol B. Craig, an adult individual, is the parent and natural guardian of Natalie Thunell, minor complainant; and Kathleen L. Arture, an adult individual, is the parent and natural guardian of Lisa Arture, minor complainant. Complainants are citizens and residents of the Commonwealth of Pennsylvania.

2. Respondents Mars Community Boys Baseball Association, hereinafter referred to as "Association" and Hank Golebiewski, President, located in Mars, Allegheny County, Pennsylvania, operate male community baseball teams for youth between the ages of 8 to 18.

3. Carol B. Craig filed a complaint with the Pennsylvania Human Relations Commission, hereinafter referred to as "Commission" on behalf of her daughter Natalie Thunell on May 5, 1975.

4. Kathleen L. Arture filed a complaint with the Commission on behalf of her daughter Lisa Arture on April 23, 1975.

5. Complainants' complaints allege that Respondents violated Section 3 and Section 5 (i) (1) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. by denying to minor complainants membership and participation in the Association.

6. A public hearing was convened before the Chairperson of the Commission Hearing Panel on June 9, 1977, in the offices of the Commission, 355 Fifth Avenue, Pittsburgh, Pennsylvania.

7. Respondent and Counsel for complainants signed a waiver of their right to have three (3) commissioners present to conduct the above public hearing.

8. Respondent Hank Golebiewski voluntarily represented himself as President of Association, and the Association Respondent.

9. Counsel for complainants and respondent entered into a written Stipulation which was offered and admitted into the record as the sole evidence presented at hearing. The terms of said Stipulation are incorporated herein and made a part of these findings.

10. In March, 1975, minor complainants attempted to join Association by paying the required \$5.00 registration fee.

11. On April 9, 1975, at an Association meeting, Respondents decided not to allow minor complainants to join the Association's baseball program solely because of their sex, female.

12. Respondent has maintained a policy and practice of discrimination against female applicants based solely on sex in violation of Sections 3 and 5 (i) (1) of the Pennsylvania Human Relations Act.

13. Respondents' denial to minor complainants of membership and participation in its baseball program constitutes sex discrimination in violation of Sections 3 and 5 (i)(1) of the Pennsylvania Human Relations Act.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for her)
minor daughter, NATALIE)
THUNELL, and KATHLEEN L.)
ARTURE, for her minor daughter,)
LISA ARTURE,)

Complainants)

VS.)

MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainants, the Respondent, and the subject matter of the Complaints in this action at Docket Nos. P-1114 and P-1115, pursuant to Sections 3 and 5 (i)(1) of the Pennsylvania Human Relations Act, in which Complainants seek relief from discrimination in denial to them because of sex the accommodations, facilities or privileges of Respondent's baseball association which is made unlawful by §5(i)(1) of the Act.

2. Respondent received proper notice of this Complaint and proper notice and opportunity for public hearing as required by §9 of the Pennsylvania Human Relations Act, 43 P.S. §959.

3. Respondent is a place of public accommodation within the meaning of §4 and §5(i)(1) of the Pennsylvania Human Relations Act, 43 P.S. §954 and §955.

4. Respondent's maintenance of sex segregated admissions, policies and practices to its baseball association by refusing to admit females constitutes discrimination on the basis of sex in violation of Section §5(i)(1) of the Act.

5. Membership and participation in the association is based solely on sex.

6. Respondent has maintained an intentional policy and practice in discriminating against females on the basis of sex in violation of Section §5(i)(1) of the Act.

7. Respondent has failed to establish that females are physically incapable of engaging in the baseball games operated by respondent's association.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for her)
minor daughter, NATALIE)
THUNELL and KATHLEEN ARTURE)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)

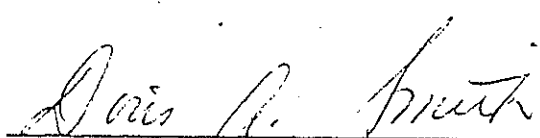
MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

RECOMMENDATION OF HEARING COMMISSIONER

AND NOW, to wit: this 25th day of September , 1977,
upon consideration of all the evidence presented at the public
hearing in the above entitled case, and pursuant to the Findings
of Fact and Conclusion of Law, the Hearing Commissioner recommends
to the entire Commission that an Order be entered against the
Respondents holding that the Respondents violated Sections 3 and
5(i)(1) of the Pennsylvania Human Relations Act and providing for
the appropriate relief.


DORIS A. SMITH, CHAIRPERSON
HEARING PANEL

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG for her)
minor daughter, NATALIE)
THUNELL and KATHLEEN L. ARTURE,)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)

MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

DECISION OF THE COMMISSION

AND NOW, TO WIT: this 25th day of September , 1977,
upon recommendation of the Public Hearing Commissioner and upon
the evidence of record in this case, and consideration of the
Findings of Fact and Conclusions of Law, the Pennsylvania Human
Relations Commission finds that Respondents engaged in an unlawful
discriminatory practice in violation of Sections 3 and 5(i)(1) of
the Pennsylvania Human Relations Act, in that Respondents dis-
criminated against minor complainants because of their female sex
in denying to them membership and participation in the Association's
baseball program operated for male youth.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Joseph X. Yaffe
JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

Elizabeth M. Scott
ELIZABETH M. SCOTT, SECRETARY

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MRS. CAROL B. CRAIG, for her)
minor daughter, NATALIE)
THUNELL and KATHLEEN L. ARTURE,)
for her minor daughter, LISA)
ARTURE,)

Complainants,)

VS.)

MARS COMMUNITY BOYS BASEBALL)
ASSOCIATION, HANK GOLEBIEWSKI,)
PRESIDENT,)

Respondents.)

Docket Nos. P-1114 and
P-1115

FINAL ORDER AND DECREE

1. That Respondent shall conduct its Admissions Procedure or practice in accordance with the Pennsylvania Human Relations Act, Act of October 27, 1975, P.L. 744, 43 P.S. §951 et seq., as amended.

2. Respondent shall cease and desist from refusing to admit females who apply for membership and participation in Respondent's baseball association.

3. That Respondent offer to Complainants the opportunity to re-apply for admission and participation in its baseball association.

4. Respondent shall submit to the Commission, semi-annual reports containing names and ages of female applicants and admission to membership and participation in Respondent's Association for a

EXHIBIT "D"

period of two years, Respondent shall include in its reports, names of females who actively participated in Respondent's baseball games for the period reported.

5. Respondent shall take reasonable steps to insure that Complainants are not subjected to harrassment or discrimination by reason of their filing the above captioned complaints and that their performance shall be judged on the same criteria as male participants.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Joseph X. Yaffe
JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

Elizabeth M. Scott
ELIZABETH M. SCOTT, SECRETARY

October 5, 1977
EFFECTIVE DATE OF THIS ORDER

NOV 1 1977

October 24, 1977

Joseph X. Yaffe, Chairperson
Commonwealth of Pennsylvania
Governor's Office
Human Relations Commission
100 N. Cameron Street, 2nd Floor
Harrisburg, Pennsylvania 17101

OCT 31 10 57 AM '77
NEW JERSEY
PA HUMAN RELATIONS
COMMISSION
HEADQUARTERS

Re: Docket Nos. P-1114 and P-1115
Final Order and Decree dated October 5, 1977

Dear Mr. Yaffe:

At the regular meeting of the Mars Community Boys Baseball Association held October 12, 1977, the membership voted 15 to 1 that the Association not comply with the above referenced order and decree.

The vote was based on the following reasons:

1. We are a private volunteer organization, not a public agency.
2. All funds to operate the Association are raised by the membership and the players. We do not receive any State or Federal funds.
3. The Association's sole experience for the past 20 years has been with boys. The membership has expressed concern about possible negligence suits against a manager in case of injury to a girl; i.e., our insurance liability and/or a court decision in a negligence suit that could affect their personal property and income.
4. Since this is a democracy, everyone has the right and privilege of organizing a Girl's Baseball Association, a Girl-Boy Baseball Association, etc. All that is required is time and effort. Our Association has offered its assistance in organizing and sponsoring a Girls Baseball Association to the Plaintiff at our October 12th meeting. This was flatly refused by one of the Plaintiffs with the statement that "We do not want girls playing girls, we want the girls playing boys".
5. The Association feels that the Mars girls softball program would be jeopardized by this order.

The Mars Community Boy's Baseball Association's program has benefitted approximately 400 boys annually for the past 20 years, and we sincerely believe we have been an asset to the community.

EXHIBIT "E"

Based on the above, we respectfully request that the Commission reverse the Final Order and Decree issued to our association.

Very truly yours,

MARS COMMUNITY BOY'S BASEBALL ASSOCIATION

Hank Golebiewski

Hank Golebiewski, President

cc. - Membership

MARS BOYS BASEBALL ASSOCIATION



_____ T-BALL _____ LL _____ COLT
 New Boy
 _____ FARM _____ PONY _____ LEGION _____ FIREMEN
 Last year's team

ALL BOYS MUST REGISTER - BOTH NEWCOMERS AND OLD MEMBERS OF TEAMS

NAME _____ BORN _____ PHONE _____
 MONTH DAY YEAR

MAILING ADDRESS _____
 STREET or R.D. # CITY Zip

I/WE the parents of the above named boy who is a candidate for a position for a team operated by the Mars Community Boys Baseball Association, hereby give My/Our approval for his participation in any and all of the activities of the League to which he is assigned during the 1978 season. I/We assume all the risks and hazards incidental to the conduct of the activities and the transportation to and from all activities.

I/We do further RELEASE, ABSOLVE, INDEMNIFY AND HOLD HARMLESS the Mars Community Boys Baseball Association and the T-Ball, Farm, Little, PONY, COLT, etc., Leagues operated by the said Association, the organizers, sponsors, supervisors and all the officers of the Association.

I/we likewise release from responsibility any person transporting My/Our child to or from any League activities.

I/We will furnish birth certificate upon request.

REGISTRATION FEE is \$17.00. For a second son, \$15.00, for a third son, \$11.00. This Fee includes the price of the coupon book, which the boy will sell, but only the Coupon Stubs will have to be returned. All proceeds go to the Baseball Assoc.

Do you have a Health and Accident Policy? YES _____ NO _____

PARENTS SIGNATURE _____ DATE _____

FATHERS AND MOTHERS - Please check one of the activities listed below that you would be interested in participating in:

- | | |
|---------------------------|-----------------------------------|
| _____ Field Maintenance | _____ Coaching |
| _____ Fund Raising Events | _____ Refreshment Stands at Games |
| _____ Umpiring | |

IN THE SUPREME COURT OF PENNSYLVANIA

Western District

No. 132 March Term 1978

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,
Appellant

vs.

MARS COMMUNITY BOYS BASEBALL
ASSOCIATION, THOMAS McKEON, PRESIDENT,
Appellee

BRIEF FOR APPELLANT

Appeal from the Order of the Commonwealth Court of
Pennsylvania at No. 1358 C.D. 1978, setting aside
the Final Order of the Pennsylvania Human Relations
Commission at Commission Docket No. P-1114 and P-1115

ROBERT S. MIRIN, General Counsel
Pa. Human Relations Commission
100 North Cameron Street
Harrisburg, Pennsylvania 17101

William Churchill,
Assistant General Counsel
Suite 1210-355 Fifth Avenue
Pittsburgh, Pennsylvania 15222

Edith Cox,
Assistant General Counsel
100 North Cameron Street
Harrisburg, Pennsylvania 17101
Attorneys for Appellant

TABLE OF CONTENTS

	Page
I. STATEMENT OF JURISDICTION.....	1
II. STATEMENT OF QUESTION(S) INVOLVED.....	2
III. STATEMENT OF THE CASE.....	3
IV. SUMMARY OF ARGUMENT.....	5
V. ARGUMENT.....	6
A. Correct construction of the Pennsylvania Human Relations Act in its <u>totality</u> requires the Court to insert the noun "sex" into Section 5(i)(1) in order to effectuate the Acts remedial purposes.	
B. The Equal Rights Amendment to the Pennsylvania Constitution, which prohibits the denial of equal rights on the basis of an individual's sex, also requires that Section 5(i)(1) of the Pennsylvania Human Relations Act be read to prohibit discrimination on the basis of sex in the area of access to public accommodations.	
C. The recent amendments to the Pennsylvania Human Relations Act, which do insert the noun "sex" into Section 5(i)(1), were intended for clarification only.	
VI. CONCLUSION.....	22

TABLE OF CITATIONS

Cases	Page(s)
<u>Burton vs. Wilmington Parking Authority,</u> 365 U.S. 715 1961	16
<u>City of Philadelphia vs. Milk Marketing Board,</u> 7 Pa. Cmwlth. 180, 299 A.2d 197 (1973).....	13
<u>Commonwealth by Packel vs. Pennsylvania Interscholastic Athletic Association, Pa. Cmwlth. 334, A.2d 839 (1972).....</u>	15
<u>Green vs. Milk Control Commission,</u> 340 Pa., 1, 16 A.2d 9 (1940).....	12, 13
<u>Harrisburg School District vs. Pennsylvania Interscholastic Athletic Association,</u> 453 Pa. 95, 309 A.2d 353, (1973).....	15, 17
<u>Pennsylvania Human Relations Commission vs. Alto Reste Park Cemetery Association,</u> 453 Pa. 124, 306 A.2d 881 (1973).....	10, 11, 12, 14, 20
<u>Pennsylvania Human Relations Commission vs. Chester School District, 427 Pa. 157, 233 A.2d 290 (1967).....</u>	9, 10
<u>Western Pennsylvania Water Company vs. Pennsylvania Public Utility Commission,</u> Pa. 370 A.2d 337 (1977).....	13

STATUTES

Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744 <u>as amended</u> , 43 P.S. §951 et seq.	
§951 et seq.....	
§952.....	7, 9, 11, 12, 14
§953.....	7, 9, 12, 14
§954.....	10, 11, 16, 17, 19, 20
§955 (i) (1).....	6, 8, 9, 12, 16, 17, 18, 19, 20

Statues

Page(s)

§957.....19, 20

§962.....8, 11

Statutory Construction Act, 1 Pa. C.S.A. §192
et seq. (Former 46 P.S. 5 et seq.).....8

§1921.....9, 10

§1922.....9, 17

§1924.....9

Constitution

Pennsylvania Constitution, Article I, §28,
Adopted May 28, 1971..... 15, 16, 17

Other

31 Vanderbilt Law Review No. 4, 785,
1978.....16

I.

STATEMENT OF JURISDICTION

Jurisdiction is based upon Section 203 of the Appellate Court Jurisdiction Act of 1970, Act No. 223, July 31, 1970, P.L. 675, 17 P.S. Section 211.203 which provides for appeals as a matter of right from final orders of the Commonwealth Court, and upon the acknowledgement by the Supreme Court of Pennsylvania of Appellant's Amended Notice of Appeal: July 27, 1978, at No. 132 March Term, 1978.

II.

STATEMENT OF QUESTION(S) INVOLVED

Does the Pennsylvania Human Relations Commission, which is specifically concerned with discrimination in "places of public accommodation", have jurisdiction to enforce the "places of public accommodation" section of the Pennsylvania Human Relations Act in a sex discrimination matter, notwithstanding the omission of the noun "sex" in Section 5(i)(1) of the Act?

(This question was answered in the negative by the Court below.)

III.

STATEMENT OF THE CASE

This is an appeal from the decision and Order of the Commonwealth Court of Pennsylvania at No. 1358 C.D. 1978, which denied the Pennsylvania Human Relations Commission's application for an order to enforce its Final Order, and set aside the Commission's Final Order of October 5, 1977, entered at its Docket Nos. P-1114 and P-1115.

During April and May of 1975, complaints were filed with the Commission by two individuals, Carol B. Craig and Kathleen L. Arture, on behalf of their minor daughters, Natalie Thunell and Lisa Arture, alleging that the Mars Boys Baseball Association (hereinafter "Mars") violated Section 3 and Section 5(i)(1) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744 as amended, 43 P.S. Section 951 et seq. (hereinafter the "Act") by refusing to allow their daughters to participate in the league solely because of their sex.

The Commission conducted an investigation, determined that there was probable cause to credit the allegations of the complaints, and endeavored to eliminate the unlawful discriminatory practice by conference, conciliation and persuasion.

Conciliation having failed, the Commission convened a public hearing on June 9, 1977. The parties agreed to written stipulations which were entered into the record of the public hearing. The Hearing Panel made a recommendation to the full

Commission on the basis of the record that it find that Mars maintained sex segregated admission policies and practices regarding its baseball association by refusing to admit females, in violation of Section 3 and Section 5(i)(1) of the Act. On October 5, 1977, a Final Order and Decree was entered by the full Commission, adopting the panel's findings and recommendations, inter alia, finding an unlawful discriminatory practice and directing Mars to cease and desist its restricted admission practices. When the Commission's Final Order was not followed, the Commission applied to the Commonwealth Court for an Order seeking enforcement of its Order as authorized by Section 10 of the Act.

In a memorandum opinion dated June 30, 1978, the Commonwealth Court denied the application for an order of enforcement, and set aside the Commission's Final Order and decree of October 5, 1977. The Court ruled that because Section 5(i)(1) does not specifically include the word "sex" the Commission could not exercise jurisdiction over sex discrimination in places of public accommodations. The Court reasoned that allowing such jurisdiction in spite of the omission would force it to "rewrite the Act", which it declined to do.

The Commission then made this timely appeal from the Opinion and Order of the Commonwealth Court.

IV. SUMMARY OF ARGUMENT

The holding of the Court below, that the Commission lacks jurisdiction over matters of sex discrimination in places of public accommodation, is based upon the mere omission of the noun "sex" from Section 5(i)(1) of the Act. The Commission argues that Commonwealth Court erred in its analysis. This argument has three distinct bases.

The first is proper statutory construction. Liberal construction of the Act, required by Section 12, compels a reading of the entire Act, including Section 2's statement of public policy and Section 3's creation of civil rights. This reading unquestionably grants jurisdiction to the Commission over cases of sex discrimination by places of public accommodation.

The second is Constitutional. The Commonwealth Court's decision would permit sex discrimination by all places of public accommodation in the Commonwealth. At least some of these places are clearly within the reach of the Equal Rights Amendment to the Pennsylvania Constitution. Sex discrimination by them is thus patently unconstitutional.

The third involves the proper interpretation of the effect of the most recent amendments to the Act. These amendments insert the noun "sex" into Section 5(i)(1). It is argued that policy considerations as well as analysis of the amendments themselves compel the conclusion that the amendments were intended for clarification only.

V.

ARGUMENT

The Commission believes that it has jurisdiction over cases of sex discrimination in places of public accommodation a contention rejected by the Commonwealth Court. This belief has three distinct bases: 1) construction of the Act itself, as already done by this Court; 2) analysis of the effect of Pennsylvania's Equal Rights Amendment on the relevant sections of the Act; and 3) interpretation of the function of the most recent amendments to the Act.

A. CONSTRUCTION OF THE ACT

Section 5(i)(1) of the Act states;

It shall be an unlawful discriminatory practice ... (i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation to: (1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry, national origin, or handicap or disability, or to any person due to use of a guide dog because of the blindness of the user ... any of the ... privileges, of such place of public accommodation.

Nowhere is sex mentioned in §5(i)(1) as a forbidden basis of discrimination. Standing alone, the section would seem to support the holding of the court below that the Commission lacks jurisdiction over this area.

The section does not, however, stand alone. It is but one part of a comprehensive statutory scheme defining and combatting certain forbidden kinds of discrimination in the Commonwealth. Three other sections of the Act, as amended, are relevant to the issue of the Commission's jurisdiction over public accommodations and sex discrimination.

Section 2 states:

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, handicap or disability, use of guide dogs because of blindness of the user, age, sex or national origin is a matter of concern to the Commonwealth.

(b) It is hereby declared to be the public policy of this Commonwealth ... to assure equal opportunities to all individuals and to safeguard their rights at places of public accommodation and to secure commercial housing regardless of race, color, religious creed, ancestry, sex, handicap or disability, use of guide dog because of blindness of the user or national origin.

More explicit than this general declaration of public policy is the statement of Section 3:

The opportunity for an individual ... to obtain all the accommodations, advantages, facilities and privileges of any place of public accommodation and of commercial housing without discrimination because of race, color, religious creed, ancestry, handicap or disability, age, sex or national origin are hereby recognized as and declared to be civil rights which shall be enforceable as set forth in this Act.

Read together with Section 5(i)(1), these sections compel the conclusion that sex discrimination in places of public accommodation was within the purview of the Act even prior to the recent statutory amendments. Not only is such discrimination declared to be contrary to the public policy of the Commonwealth; the opportunity to enjoy all the privileges of places of public accommodation is expressly declared to be a civil right which is enforceable under the Act. The absence of the noun "sex" from Section 5(i)(1) cannot support the construction of the Act made below. It is illogical to suppose that the Legislature intended to create this civil right with one hand and bar the Commission from protecting it with the other.

The three sections cited thus far do create ambiguity as to the Act's scope. Another section validates the solution to this ambiguity which is urged by the Commission. Section 12 states: "The provision of this act shall be construed liberally for the accomplishment of the purposes thereof ..."

Section 12 supports construction of the Act in its entirety, giving the Commission jurisdiction to protect all declared civil rights, including that of equal access to places of public accommodation for all citizens.

This interpretation of the statute, which harmonizes apparently conflicting sections, is also required by three provisions of the Statutory Construction Act, (1 Pa. C.S.A. Section 1924, et seq. previously 46 P.S. §544 et seq), which state:

Section 1921 (former §551): Every law shall be construed, if possible, to give effect to all its provisions.

Section 1922 (former §552): In ascertaining the intention of the Legislature ... the courts may be guided by the following presumptions ... (2) that the Legislature intends the entire statute to be effective and certain; (3) That the Legislature does not intend to violate the Constitution of the United States or of this Commonwealth.

Section 1924 (Former §554): The title and preamble of a statute may be considered in the construction thereof.

The impact of the Act's Preamble on Section 5(i)(1), wherein sex discrimination in places of public accommodation is stated to be contrary to public policy, is unquestionable. Even stronger is the mandate of Section 3. Equal access to places of public accommodation free from sex discrimination is positively declared to be a civil right. If this right is to be meaningful and enforceable, as Section 3 declares, "sex" must be read into 5(i)(1). Only by this construction can effect be given to all sections of the Human Relations Act, making the entire Act effective, consistent and certain. The State Constitutional issue to which §1922 above refers will be treated below.

This Court's own decisions have utilized reasoning similar, and in one case identical, to that urged here.

In Pennsylvania Human Relations Commission vs. Chester School District, 427 Pa. 157, 233 A.2d 290 (1967), the Court stated at 295:

The canons of statutory construction require that a statute be read in a manner which will effectuate its purpose, a task which compels consideration of more than the statute's literal words. (citations omitted.)

In Chester, as in this case, the Commission's jurisdiction was at issue. There this Court overruled the Commonwealth Court's limiting interpretation and affirmed the Commission's assertion of jurisdiction, resolving a latent ambiguity in the statute by reference to the statute's statement of policy and purpose, and canon of liberal construction, as well as to Section 1921 (former §551) of the Statutory Construction Act, cited above. In so doing this Court arrived at a reasonable construction of the Statute which permitted the Commission to address the problem entrusted to it by the Legislature.

In PHRC vs. Alto Reste Park Cemetary Association, 306 A.2d 881 453 Pa. 124 (1973), this Court adopted the language of a sister jurisdiction to hold at 886:

The primary rule of statutory construction is to ascertain the legislative intent, and all other rules of construction are secondary thereto.

Alto Reste affirmed the Commission's assertion of jurisdiction over a non-sectarian cemetery. At the time of the discriminatory acts, cemeteries were not included in Section 4(1)'s listing of places of public accommodation (amendments to the Act included them prior to argument before this Court.)

This Court interpreted "including but not limited to" ... in Section 4(1) as a phrase of enlargement and not limitation (at 885), holding that non-sectarian cemeteries were places of public accommodations even before the amendment.¹ The Court relied there upon the Act's mandate for liberal construction. It also noted the special position of cemeteries at 886-7:

Thus, it is impossible to conclude that non-sectarian cemeteries were not "place(s) of public accommodation" prior to the 1970 amendments to the Pennsylvania Human Relations Act, supra. Cemeteries are of unquestionable public importance. Their operation, having a sufficiently intimate relationship with the public interest and welfare, justifies the close regulation afforded them (cemeteries) by our Legislature. See 9 P.S. §1 et seq. The public need for the services made available by cemeteries is irrefutably all inclusive, -all of us at one time or another will be entrusted unto their care. All of these factors bring cemeteries squarely into the public domain and give them a special status. So long as a nonsectarian cemetery holds that status, it may not, and could not legally, as a "place of public accommodation", discriminate on the basis of "...race, color, religious creed, ancestry, use of guide dog because of blindness of the user, age, sex or national origin." Pennsylvania Human Relations Act, supra at §2(a), 43 P.S. P.S. §952(a).

1

Alto Reste's treatment of this amendment will be discussed separately in Part C below.

The above cited language is dispositive of the present case.

First, if cemeteries in particular are this specially important, public accommodations in general are immeasurably more so. All citizens must repeatedly afford themselves of the services and opportunities of public accommodations. All citizens are potentially victims of sex discrimination. Denying the Commission jurisdiction over this extremely broad area unnecessarily undermines its jurisdiction and ability to fulfill its statutory mission. It would thwart the legislative purpose so clearly manifest in Sections 2 and 3 to sustain the Commonwealth Court's interpretation of §5(i)(1).

Most important, the final sentence of the cited passage is squarely on point. This Court, albeit in a slightly different context, indicated that places of public accommodation such as non-sectarian cemeteries could not legally discriminate on the basis of sex. In so holding it read Section 2(a) and not Section 5(i)(1), as setting forth the proscribed bases of discrimination. The Commission believes that Alto Reste sets forth the proper scope of the Act's coverage of places of public accommodation in the Commonwealth.

The cases of this Court holding that an administrative agency's jurisdiction is strictly limited by the language of the relevant statute are not in conflict with this result. In Green vs. Milk Control Commission, 340 Pa. 1, 16 A.2d 9 (1940), this Court stated at 9 that:

The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist.

The issue in Green was the jurisdiction of the Milk Control Commission over consignment transactions. Reading the entire Milk Control Act, the Court refused to find such jurisdiction, noting at 9:

(The law) speaks of the "purchase" of milk by dealers, "delivery and sale to them;" it uses the words "buy", "purchase", "prices", "bought or sold", "sell or buy". The words "consign" or "consignment" nowhere appear.

The clear and unmistakable legislative language required by this Court nowhere conferred such authority within the statute. Conversely, the power which the Commission has to exert is not a "doubtful power" because clear and unmistakable language conferring jurisdiction exists in two separate sections of the Act.

See also City of Philadelphia vs. Milk Marketing Board, 7 Pa. Cmwlth. 180, 299 A.2d 197 (1973), where a holding similar to Green's was grounded in the statute's failure to anywhere mention a power to grant refunds.

More recently, in Western Pennsylvania Water Company vs. Pennsylvania Public Utility Commission, 370 A.2d 337 (1977), this Court refused to allow an agency to extend its jurisdiction by means of an agreement; again, nowhere did the relevant

statute even arguably confer the power in question.

In conclusion, the Commission urges that Alto Reste is dispositive of this case, both in its liberal construction of the Act and in its reliance on Section 2 for an enumeration of the forbidden bases of discrimination. The cases limiting the power of administrative agencies are not in conflict. In each of them, the statute was silent as to the power sought by the agency. The Human Relations Act is far from silent about the area of sex discrimination by places of public accommodation. Sections 2 and 3 positively require the Commission to assert jurisdiction over this area.

B. THE EQUAL RIGHTS AMENDMENT

Article I, Section 28 of the Pennsylvania Constitution states:

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

The Commission argues that the limiting construction adopted below is at least in part invalid under the Equal Rights Amendment.

In Commonwealth by Packel vs. Pennsylvania Interscholastic Athletic Association, Pa. Cmwlth. 334 A.2d 839 (1972) the Court elucidated a fundamental aspect of the Equal Rights Amendment's application at 842:

The concept of "equality of rights under the law" (emphasis added) is at least broad enough in scope to prohibit discrimination which is practiced under the auspices of what has been termed "state action" within the meaning of the Fourteenth Amendment to the United States Consitution.

Commonwealth Court went to rely on an earlier case of this court, which held that action by the PIAA constituted state action. (Harrisburg School District vs. PIAA, 453 Pa. 95, 309 A.2d 353, 1973). The basis of the earlier decision was that the PIAA was funded "ultimately by the Commonwealth's taxpayers" (at 842), and by gate receipts from events on state land using state supplied facilities.

Exactly what constitutes state action for United States Constitution Fourteenth Amendment purposes is a complicated issue¹ which need not be introduced in full here. The Commonwealth Court's test of ultimate funding by taxpayers is solidly within federal Fourteenth Amendment cases. (Burton vs. Wilmington Parking Authority, 365 U.S. 715, 1961).

If the places of public accommodation listed in Section 4(1) of the Act are examined in light of this test, the actions of many of them will be found to constitute state action. Section 4(1)'s enumeration includes:

...clinics, hospitals ... recreation parks; fairs ... public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth --- all public conveyances on land or water or in the air as well as the stations, terminals and airports, thereof ...

These places of public accommodation are institutions of the sort which are ultimately funded by taxpayers. Inserting these enumerated places of public accommodations into Section 5(i)(1), it is clear that Commonwealth Court's interpretation of the Section would allow each of those places to discriminate on the basis of sex. This result is constitutionally in conflict with the Pennsylvania Equal Rights Amendment.

1

See Vanderbilt Law Rev., V. 31 No. 4 1978: Current State Action Theories, the Jackson Nexus Requirement, and Employee Discharges by Semi-Public and State-Aided Institutions.

It must also be emphasized that the state action test elucidated by this Court in Harrisburg School District is admirably simple and straight forward. Abundant confusion exists on the federal level. If federal definitions of state action are to be adopted wholesale by this Court as governing Equal Rights Amendment application, even more of the places listed in 4(1) could conceivably be included. In any event, a "place by place" determination would be required. Each institution's funding would have to be scrutinized, and a judicial determination of the impact of partial state funding would be needed.

Whether state action be defined broadly or narrowly, however, it is indisputable that many Pennsylvania places of public accommodation are covered. The Commission urges this Court to avoid a holding of even partial unconstitutionality by reading Section 5(i)(1) to forbid discrimination on the basis of sex.

Support for this result is also found in the Statutory Construction Act. Section 1922 (former Section 552) states:

In ascertaining the intent of the legislature... the courts may be guided by the following presumptions -- (3) that the Legislature does not intend to violate the Constitution of the United States, or of this Commonwealth.

C. EFFECT OF RECENT AMENDMENTS

Finally, the Commission urges this Court to adopt its interpretation of the effect of the most recent amendments to the Human Relations Act.

With the exception of the religious BFOQ addition, the amendments are merely ministerial clarifications of the pre-existing effect of the Equal Rights Amendment upon state statutory law. Act 1978 - 309 (H.B. 2215) was signed by former Governor Milton Shapp on November 26, 1978, and took effect sixty days from the date of signing. Relevant to this litigation is Act 309's insertion of "sex" into Section 5(i)(1). Effective January 25, 1979, places of public accommodation in the Commonwealth are explicitly forbidden to discriminate on the basis of sex.

No legislative history elucidates the intent of the General Assembly in passing Act 309. However, the overwhelming support for the amendments is noteworthy: they passed the House by a 190 - 2 vote - (Commonwealth of Pennsylvania, Legislative Journal, House of Representatives, June 20, 1978) and the Senate by a unanimous 49 - 0 vote (Legislative Journal, Senate, September 27, 1978).

Close study of the entire amendment is also enlightening. "Sex" was inserted into four sections where it had not previously appeared; only one of the four altered sections generated further amendment.

Prior to Act 309, Section 4(b)'s definition of "employer" did not include religious, fraternal, charitable and sectarian corporations and associations employing four or more persons who discriminated on the basis of sex. The insertion of "sex" into that passage of section 4(b) elucidates that sex discrimination by such organizations is unlawful. This clarification was accompanied by a further qualifying change: the creation of a BFOQ for religious groups whose beliefs require them to employ individuals of a particular sex for a particular position. Religious groups may no longer discriminate on the basis of sex; they may continue to practice religious beliefs which require that a person of one sex or the other fill certain positions.

In the absence of legislative history, it is a fair assumption that Section 4(b)'s initial omission of "sex" as to religious, fraternal, and charitable groups was intentional. The reason for the original omission may be inferred from the addition of the BFOQ as to sex. The danger which the Legislature sought to avoid by the original omission was infringement upon the free exercise rights of religious groups. The new "religious BFOQ" protects those rights and extends the Act's reach to situations where they are not at issue.

"Sex" was inserted into the Act in three other places. The change in Section 5(i)(1) has already been noted. In Section 7, (j) and (k) were expanded. (j) authorizes the Commission to publish such reports as will "in its judgement, ... tend to ... eliminate discrimination..." on the basis of

several factors; sex is now among them. (k) requires the Commission to report at least yearly to the Legislature, and to make further recommendations for legislation concerning discrimination of various sorts. Sex discrimination is now included.

Significantly, in no case other than that of religious groups was the insertion of "sex" accompanied by any further amendment.

An aspect of Alto Reste not mentioned above is also instructive. As already noted, this Court in that case construed the Act liberally to support the Commission's assertion of jurisdiction over a non-sectarian cemetery. Cemeteries were not included in Section 4(1)'s enumeration of public accommodations when the case arose; they were included, by amendment, prior to this Court's decision. The Appellee's contention that the amendment was evidence that the Legislature had not originally intended them to be covered was rejected by this Court at 886. It was held that the amendments were intended solely to clarify. This Court's reliance on the public importance of cemeteries has already been discussed; it is urged that similar reasoning applies here too, and compels a holding that the most recent amendments, including the insertion of "sex" into Section 5(i)(1), were intended only for clarification.

A contrary holding would have serious negative consequences. Not only would the present plaintiffs be forced to retrace their steps through Commission procedure should Mars continue

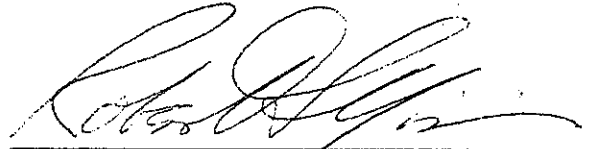
its present discriminatory policies. This Court by adopting the reasoning of Commonwealth Court would effectively ratify acts of sex discrimination by places of public accommodation which took place before the effective date of the most recent amendments. The Commission believes that this result would be contrary to sound principles of statutory construction, clear indicia of legislative intent, and the Constitution of this Commonwealth.

VI.

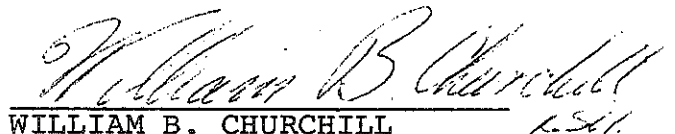
CONCLUSION

The appellant prays for reversal of the judgment below and reinstatement of the Commission's Final Order in its entirety, for the reasons set forth herein.

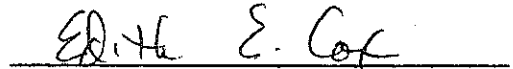
Respectfully submitted,



ROBERT S. MIRIN
General Counsel



WILLIAM B. CHURCHILL
Assistant General Counsel



EDITH E. COX
Assistant General Counsel

IN THE SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

PENNSYLVANIA HUMAN RELATIONS :
COMMISSION, :

Appellant :

vs. :

No. 132 March Term, 1978

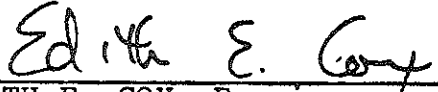
MARS COMMUNITY BOYS BASEBALL :
ASSOCIATION, Thomas McKeon, :
Appellee :

PROOF OF SERVICE

I hereby certify that copies of this Brief were mailed
on this day in the manner indicated below in compliance
with Pennsylvania R.A.P 2187:

Service by First Class
Mail Addressed as Follows:

Mars Community Boys Baseball Association
c/o Mr. Henry Golebiewski
8 South Drive
Valencia, Pennsylvania 16059


EDITH E. COX, Esquire
Assistant General Counsel