

**COMMONWEALTH OF PENNSYLVANIA**

**GOVERNOR'S OFFICE**

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**MARGARET DOWNEY-SCHOTTMILLER,**  
Complainant

v.

**DOCKET NO. P-3986**

**CHESTER COUNTY COUNCIL OF  
THE BOY SCOUTS OF AMERICA,**  
Respondent

**STIPULATIONS OF FACT**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**FINAL ORDER**

**CONCURRING OPINION**

**DISSENTING CONCLUSIONS OF LAW**

**DISSENTING OPINION**



8. ~~Because the parties failed to conciliate this matter,~~  
 the Commission approved this case for a public hearing and the  
 parties were notified thereof. CR

9. The BSA was federally chartered by Act of Congress in  
 1916 <sup>o</sup> to ~~"promote, through organization, and cooperation with  
 other agencies, the ability of boys to do things for themselves  
 and others, to train them in scoutcraft, and kindred virtues,  
 using the methods which were in common use by Boy Scouts on June  
 15, 1916" through Congress in 1926~~ 36 U.S.C. § 23. CR

10. ~~The general powers and duties of the BSA include the  
 ability of the BSA to "make and adopt by laws, rules, and regula-  
 tions not inconsistent with laws of the United States of America,  
 or any State thereof, and generally to do all things . . . as may  
 be necessary to carry into effect the provisions of this chapter  
 and promote the purposes of said corporation." 36 U.S.C. § 22,~~

11. ~~The BSA authors and owns the copyrights to Handbook for  
 Boys, Boy Scout Requirements, The Boy Scout Handbook, and The  
 Scoutmaster Handbook.~~ CR  
*Respondent stipulates to the authenticity of the*

12. ~~The BSA endeavors "to supplement the various existing  
 educational agencies, and to promote the ability in boys to do  
 things for themselves and others." Handbook for Boys, at page 3.~~ CR

13. ~~Respondent Council and other councils "make training  
 courses available for scout leaders, provide local camping  
 facilities, make available such program material as literature  
 and audiovisuals, conduct district and council program events  
 open to all troops, maintain basic troop records, and provide~~ CR

~~year round service by commissioners and local staff people." The Scoutmaster Handbook, at page 18.~~ ck

14. The Boy Scouts of America has created policies applicable to all Boy Scouts troops.

DATE 5/18/99

  
COUNSEL FOR COMPLAINANT

DATE 5/28/97

  
COUNSEL FOR COMMISSION

DATE 5/28/99

  
COUNSEL FOR RESPONDENT

## FINDINGS OF FACT \*

1. Margaret Downey-Schottmiller (hereinafter "Complainant") is an adult residing in Chester County, Pennsylvania. (SF 1.)

2. Respondent Chester County Council, Boy Scouts of America (hereinafter "Respondent"), is a corporation incorporated pursuant to the laws and regulations of the Commonwealth of Pennsylvania, "irrevocably dedicated to the charitable and educational purposes of carrying out the program of the Boy Scouts of America." (Ex C-6.)

3. In her complaint, Complainant alleges that Respondent subjected her to unlawful discrimination because she was unwilling to sign a membership application which required "religious affirmation to belief in God."

4. The Complainant stated in her complaint that she and her minor son Matthew were non-theists, Free Thinkers.

5. Matthew Schottmiller is not a named complainant and is now over twenty-one years of age. (TR, p.81.)

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\* The foregoing Stipulations of Fact are incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional findings of fact. The following abbreviations will be utilized throughout these findings of fact for reference purposes:

|       |                       |
|-------|-----------------------|
| Ex C- | Complainant's Exhibit |
| Ex R- | Respondent's Exhibit  |
| SF    | Stipulations of Fact  |
| TR    | Transcript            |

6. Matthew Schottmiller did not testify at the public hearing. (TR, p.104.)
7. In August 1992, Complainant telephoned Respondent's office in regard to serving as a volunteer Scout leader. (Ex R-1; TR, p.83.)
8. The Complainant was told that in order to serve as a volunteer Scout leader, she would have to take the Scout Oath which includes an oath to do one's duty to God. (TR, p.101.)
9. In January 1993, Complainant completed an application on behalf of her son, deliberately striking through the word "God." (TR, pp.74, 76.)
10. The Respondent returned that application to the Complainant. (Ex C-4.)
11. At the public hearing, Complainant did present an undated "Adult Volunteer Application" on which she had struck out the word "God." (Ex C-4.)
12. Even though Complainant did not recall submitting the application, the Complainant's present complaint is based on her conversation with Mr. Beauregard. (TR, p.106.)
13. Thereafter the Complainant filed her complaint, dated December 8, 1992, with the Pennsylvania Human Relations Commission.
14. Boy Scouts of America, not a party here, is a national, charitable, youth membership organization which provides volunteer-led programs, including the Boy Scouting and Cub Scouting programs, to youths who join as members. (Ex R-50.)
15. The three aims of Scouting are (a) citizenship; (b) growth and moral strength in character; and (c) mental and physical development. (Ex C-8, p.13.)

16. The Boy Scout organization was "intended to supplement and enlarge modern educational facilities in activities in the great and healthful out-of-doors where may be better developed physical strength and endurance, self-reliance, and the powers of initiative and resourcefulness, all for the purpose of establishing through the boys of today the very highest type of American citizenship." (Ex. R-50, p.5.)

17. The program of Scouting is one "designed to achieve the objectives in character development, citizenship training, and mental and physical development." (Ex R-50, p.17.)

18. The purpose of Respondent Chester County Council is the promotion and supervision of Scouting within the limits of Chester County, which program includes the "building of true manly character, and instilling into the boys of Chester County the virtues of loyalty, self-reliance, alertness, physical fitness and kindred values." (Ex C-6.)

19. The specific membership requirements of Scouting are:

- a. Tiger Cub - must be in first grade or be age seven, but not yet eight;
- b. Cub Scout - must have completed first grade, but not have completed third grade, or be age eight or nine;
- c. Webelos Scout - must have completed third grade or be age ten, but not yet completed the fifth grade or reached age eleven and a half, whichever is later;

d. Boy Scout - must have completed fifth grade or be age eleven; or have earned the Arrow of Light Award, but not have reached age eighteen;

e. Varsity Scout - must be at least age fourteen and not yet eighteen. (Ex R-49, p.6.)

20. The purpose of the Boy Scouts of America is "to promote through organization and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in Scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred values using the methods which are now in common use by Boy Scouts." (Ex R-50.)

21. The policy of the Boy Scouts of America on the issue of religious instruction is that it is the Scout's parent or other organization with which the member is connected that is responsible for giving attention to religious life. (Ex R-50.)



## CONCLUSIONS OF LAW

1. The parties have complied with the procedural prerequisites to a public hearing in this matter.
2. The Respondent, Chester County Council of the Boy Scouts of America, is not a public accommodation under the Pennsylvania Human Relations Act.

## OPINION

This matter arises out of a complaint filed by Margaret Downey-Schottmiller (hereinafter "Complainant") against Chester County Council, Boy Scouts of America (hereinafter "Respondent"), on or about December 8, 1992, at Docket No. P-3986.

In her complaint, the Complainant alleges that she was refused membership as a volunteer of Respondent's organization because of her religious belief, non-theist (Free Thinker). The Complainant further alleges that Matthew Schottmiller, her minor son, was also refused membership because of his religious belief, non-theist. (Matthew Schottmiller was not a named complainant and is over twenty-one years of age. He did not testify at the public hearing.) Specifically, the Complainant alleges that she was denied membership because of her beliefs and her unwillingness to swear the Scout oath of duty to God.

The Pennsylvania Human Relations Commission (hereinafter "the Commission" or "PHRC") investigated the Complainant's allegations and at the conclusion of the investigation concluded that probable cause existed to credit the Complainant's allegations.

Thereafter, PHRC attempted to eliminate the alleged discrimination through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, PHRC notified the parties that it had approved a public hearing. Thereafter, Respondent filed a Motion for Rescission of Probable Cause, which was denied by PHRC Motions Commissioner Raquel Otero de Yiengst.

The public hearing in this matter was held in West Chester, Pennsylvania, on May 18, 19 and 20, 1999, before Hearing Panel Chairperson Raquel Otero de Yiengst. Phillip A. Ayers, Esquire, served as Panel Advisor to Commissioner Yiengst. Pamela Darville, PHRC Assistant Chief Counsel, represented the state's interest in the complaint; James Grafton Randall, Esquire, of Anaheim, California, represented the Complainant; and Carla A. Kerr, Esquire, and George A. Davidson, Esquire, represented the Respondent. Complainant and Respondent filed post-hearing briefs in this matter on June 1, 1999. Commission Counsel joined in Complainant's brief.

The instant case places several important legal issues before the Commission. The first argument that Respondent makes is that it is not a public accommodation under the Pennsylvania Human Relations Act. Two related questions are whether the Respondent is a religious organization or a "distinctly private" organization and, therefore, exempt from the Pennsylvania Human Relations Act (hereinafter "PHRA or "the Act").

Firstly, we must look at the public accommodation issue. A public accommodation, as defined by the Act, is as follows:

*Any accommodation, resort or amusement which **is open to, accepts or solicits the patronage of the general public**, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or anyplace where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors,*

*retail stores and establishments, theaters, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, 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, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but **shall not include any accommodations which are in their nature distinctly private.** (Emphasis added.)*

(43 P.S. §954(e).) Section 5 of the Act, 43 P.S. §955, further provides:

*It shall be an unlawful discriminatory practice. . .*

*(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation, resort or amusement to:*

*(1) Refuse, withhold from, or deny to any because of his race, color, sex, **religious creed.** . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement. . . (Emphasis added.)*

Also, Section 12 of the Act provides:

*(a) 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.*

Upon review of the facts specifically limited to this case, the Commission finds that the Respondent Chester County Council of the Boy Scouts of America is not a public accommodation under the Pennsylvania Human Relations Act. Therefore, the Respondent is not subject to the Commission's jurisdiction.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARGARET DOWNEY-SCHOTTMILLER,  
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DOCKET NO. P-3986

CHESTER COUNTY COUNCIL OF  
THE BOY SCOUTS OF AMERICA,  
Respondent

FINAL ORDER

AND NOW, this 27<sup>th</sup> day of July, 1999, after review of the entire record in this matter, a majority of the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, and hereby

**ORDERS**

that the instant complaint be dismissed.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By: Robert Johnson Smith  
Robert Johnson Smith, Chairperson

Attest:

Gregory J. Celia, Jr.  
Gregory J. Celia, Jr., Secretary

## CONCURRING OPINION

I concur with the decision of the Commission finding that the Respondent Chester County Council of the Boy Scouts of America, is not a "public accommodation." In addition, I am providing this concurring opinion so the parties will understand the reasoning behind my decision in this matter.

As I see it, the threshold question in this case is whether the General Assembly intended to include organizations like the Chester County Council of the Boy Scouts of America within the statutory language defining a "public accommodation." The Act defines "public accommodation" as follows:

*Any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or anyplace where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors, retail stores and establishments, theaters, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, 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, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but shall not include any accommodations which are in their nature distinctly private.*

This language sets forth fifty specific examples of regulated "public

accommodations", including inns, taverns, roadhouses, motels, hotels, restaurants, ice cream parlors, hospitals, swimming pools, theaters, public libraries and universities. In my opinion, none of the listed entities remotely resemble an organization like the Chester County Council of the Boy Scouts of America.

Numerous courts across the country have addressed this same issue. The reasoning coming closest to my views on this matter is set forth in Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir. 1993). In that case, the U.S. Court of Appeals for the Seventh Circuit addressed the question of whether the Boy Scouts could be considered a "place of public accommodation" for purposes of applying Title II of the Civil Rights Act of 1964. After reviewing the statutory language, the Court held that Title II did not apply because the Scouting organization was not a "place of public accommodation." *Id.* at 1278.

Unlike Title II, the term defined in the PHRA is not "place of public accommodation," but simply "public accommodation." Nevertheless, the fifty examples provided in the definition of "public accommodation" are all public places. Moreover, when setting forth what constitutes an unlawful discriminatory practice, the Act states:

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation, resort or amusement to:

(1) Refuse, withhold from, or deny to any because of his race, color, sex, religious creed. . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement. . . (Emphasis added.)

I believe the use of the phrase "place of public accommodation" here is

significant. The list of public accommodations that appears in the Act, coupled with this language from Section 5, would appear to indicate that the General Assembly intended to regulate places of public accommodation, where a person could be denied access, and not to regulate organizations such as the Chester County Council. Absent specific statutory language evidencing a clear intent on the part of the General Assembly to include groups like the Chester County Council of the Boy Scouts of America within the definition of "public accommodation" under the Act, I have to conclude that the Respondent in this case is not a public accommodation and, therefore, is not subject to the Commission's jurisdiction under the Act.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By: M. Joel Bolstein, Commissioner



## DISSENTING CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the Complainant and Respondent.
2. The PHRC has jurisdiction over the subject matter of the complaint under the Pennsylvania Human Relations Act (hereinafter "Act" or "PHRA").
3. The parties have complied with the procedural prerequisites to a public hearing in this matter.
4. The Respondent in this matter is a public accommodation, as that term is defined under the Act.
5. It is an unlawful, discriminatory practice for any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation, resort or amusement, *inter alia*, to refuse, withhold from or deny to any person because of his or her religious creed, either directly or indirectly, any of the accommodations, advantages, facilities, or privileges it offers.
6. The Respondent has refused, withheld from and denied accommodations, advantages and privileges to the Complainant because of her religious creed.
7. The Respondent has not demonstrated by a preponderance of evidence that it should be exempt from the prohibition against religious discrimination.
8. The Respondent is neither a religious organization nor a fraternal nor a distinctly private organization.
9. Where the Commission rules that a respondent has engaged in an unlawful practice, under Section 9 of the PHRA the Commission may issue a cease

and desist order, and it may order such affirmative action as in its judgment will effectuate the purposes of the Act.

## DISSENTING OPINION

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Also, Section 12 of the Act provides:

*(a) 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 specific question of whether the Respondent is a public accommodation has generated much debate in recent years. There are a number of cases which have defined "public accommodation" very narrowly. Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir.), *cert. denied*, 510 U.S. 1012, 114 S.Ct. 602, 126 L.Ed. 2d 567 (1993); and Seabourn v. Coronado Area Council, BSA, 257 Kan. 178, 891 P.2d 385 (Kan. 1995). These cases interpret public accommodation to

be applied only to a "place." The Pennsylvania Human Relations Act has always been construed broadly and, in effect, the Act was amended to drop the limitation of a "place." In the instant case, the Respondent Chester County Council is open to and solicits the general public for participation in its activities. There are a number of cases where a business purpose or business establishment was required for the applicability of a statute. Schwenk v. Boy Scouts of America, 275 Or. 327, 551 P.2d 465 (1976); also Seabourn, *supra*. However, the Pennsylvania Human Relations Act does not require that an entity or organization have a "business purpose." Another case, Quinnipiac Council, Boy Scouts of America v. Commission on Human Rights, 204 Conn. 287, 528 A.2d 352 (1987), more accurately reflects the way the Pennsylvania statute should be interpreted. In Quinnipiac, the Court stated:

*We can discern no reason to interpolate a "business" limitation into the legislature's unadorned reference to any establishment. Like the question of situs, the question of coverage must reflect the legislative purpose of eliminating discriminatory conduct by those who serve the general public.*

The Court in Quinnipiac further stated:

*Although no private organization is duty-bound to offer its services and facilities to all comers, once such an organization has determined to eschew selectivity, under our statute it may not discriminate against the general public.*

Certainly the Respondent in the instant case has "eschewed" selectivity in its membership. Any child of the appropriate age, with a parent's permission, can join the Respondent's organization if he recites an oath, pays a fee, and pledges to attend meetings. In fact, the Respondent actively advertises for new members and

volunteers. Moreover, the Respondent appears to be committed to admitting as many members as possible. Therefore, for the purposes of the PHRA, the Respondent is a public accommodation.

The next argument made by the Respondent Chester County Council, Boy Scouts of America, is that it is a religious organization. The evidence produced at the public hearing on this issue is very clear. The Respondent is a corporation "irrevocably dedicated to the charitable and educational purposes of carrying out the program of the Boy Scouts of America." Most, if not all, of the Respondent's witnesses testified that there was a duty to God requirement in the oath and a Declaration of Religious Principles which stressed the importance of the individual's religious duties. However, throughout all of the handbooks, manuals and other evidence presented at public hearing, the responsibility of religious instruction is that of the Scout's parents or organization.

A requirement that an individual believe in God and/or a requirement that an oath espousing God be repeated does not make an organization private or religious. Jacques v. Hilton, (D.N.J.) 569 F.Supp. 730 *aff'd.* (3rd Cir. 1984) 738 F.2d 422. In reviewing the record, while the religious composition of the Respondent is extremely varied, there is no uniformity of religious belief.

The Respondent accepts members of various religions including, but not limited to, Catholics, Jews, Buddhists, Hindus, Unitarians, and Deists. Certainly the Respondent recognizes that there are numerous interpretations as to the concept

of God, and what it means to "believe in God." Therefore, it is difficult to discern how the Respondent could attack this vague criterion to membership.

In addition, there are some guidelines that the Commission can borrow in determining whether Respondent is a religious organization. In EEOC v. Kamehameha Schools, 990 F.2d 458, *cert. denied*, 114 S.Ct. 439 (9th Cir. 1993), the Court wrestled with trying to make this determination. The Court in Kamehameha listed seven factors in making this determination:

1. whether a religious organization ever controlled or supported the school;
2. whether the school was affiliated with any denomination;
3. whether its advertised purpose was essentially religious;
4. the extent to which it required its faculty to be religiously affiliated;
5. the extent to which it required its members to be religiously affiliated;
6. the extent to which its activities had religious overtones; and
7. whether the curriculum was taught from a secular perspective or a religious one.

Reviewing the record in the instant case in light of the above-mentioned factors, the Respondent clearly is not a religious organization and not entitled to a religious exemption under the PHRA. As indicated before, none of the documents presented at hearing show a religious purpose, or mission, in any of the programs. The Declaration does not require a belief in God. The Respondent is not tied to a particular religious entity. There is no requirement that any Scout or Scout leader be trained by any religious organization. Finally, there is no evidence that any



religious organization controls programs or services of the Respondent. Therefore we must conclude that the Respondent is not a religious organization.

Next, we move to the Respondent's argument that it is a distinctly private organization and, therefore, exempt from the PHRA. The case law is clear that Respondent Chester County Council has the burden of proving that it is a "distinctly private" organization. United States v. Lansdowne Swim Club, (E.D. Pa. 1989) 713 F.Supp. 785, *aff'd*. 894 F.2d 83; Nesmith v. Young Men's Christian Association of Raleigh, North Carolina, 397 F.2d 96 (4th Cir. 1968). In the instant case, the Respondent cannot meet its burden. Clearly, through its programs and activities, Respondent openly solicits the participation, involvement and support of the general public. There are approximately 9,000 members of Respondent Chester County Council, alone. The Boy Scouts of America is promoted through the media, and through its public functions such as golf tournaments, and other charitable activities. Testimony at the public hearing showed that the Respondent actively seeks the attendance of the public at various functions (Ex C-9; Ex R-14). A review of the extensive record before the Commission makes it crystal clear that the Respondent is not "distinctly private."

Respondent also argues in its brief that the Boy Scouts of America and Respondent are fraternal organizations and therefore exempt from the PHRA. Once again, there is nothing in Respondent's manual, handbook, guidelines, or policies that would indicate that it is a fraternal organization and therefore exempt from the PHRA. As stated above, the Respondent has not met its burden of showing that it

is a fraternal or private organization. The Respondent cites the case of Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S.Ct. 1965 (1972) in support of this argument. However, the Moose Lodge case is clearly distinguishable from the instant case. The Moose Lodge was a local chapter of a national fraternal organization; it was not publicly funded; and only members and guests were allowed in the Lodge. Furthermore, the only way to become a member was by an invitation of a current member. The Respondent in the matter before the Commission does not fit within the confines of the Moose Lodge case.

The dissent would find that the Respondent is a public accommodation under the PHRA, and that the Respondent is neither a religious organization, a private organization, nor a fraternal organization.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By: Raquel Otero de Yiengst, Commissioner  
Theotis W. Braddy, Commissioner

COMMONWEALTH OF PENNSYLVANIA

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12. ~~The BSA endeavors "to supplement the various existing  
 educational agencies, and to promote the ability in boys to do  
 things for themselves and others." Handbook for Boys, at page 3.~~ CR

13. ~~Respondent Council and other councils "make training  
 courses available for scout leaders, provide local camping  
 facilities, make available such program material as literature  
 and audiovisuals, conduct district and council program events  
 open to all troops, maintain basic troop records, and provide~~ CR

~~year round service by commissioners and local staff people." The Scoutmaster Handbook, at page 18~~ *ck*

14. The Boy Scouts of America has created policies applicable to all Boy Scouts troops.

DATE 5/18/99

*[Signature]*  
COUNSEL FOR COMPLAINANT

DATE 5/28/97

*[Signature]*  
COUNSEL FOR COMMISSION

DATE 5/28/99

*[Signature]*  
COUNSEL FOR RESPONDENT

## FINDINGS OF FACT \*

1. Margaret Downey-Schottmiller (hereinafter "Complainant") is an adult residing in Chester County, Pennsylvania. (SF 1.)
2. Respondent Chester County Council, Boy Scouts of America (hereinafter "Respondent"), is a corporation incorporated pursuant to the laws and regulations of the Commonwealth of Pennsylvania, "irrevocably dedicated to the charitable and educational purposes of carrying out the program of the Boy Scouts of America." (Ex C-6.)
3. In her complaint, Complainant alleges that Respondent subjected her to unlawful discrimination because she was unwilling to sign a membership application which required "religious affirmation to belief in God."
4. The Complainant stated in her complaint that she and her minor son Matthew were non-theists, Free Thinkers.
5. Matthew Schottmiller is not a named complainant and is now over twenty-one years of age. (TR, p.81.)

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\* The foregoing Stipulations of Fact are incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional findings of fact. The following abbreviations will be utilized throughout these findings of fact for reference purposes:

|       |                       |
|-------|-----------------------|
| Ex C- | Complainant's Exhibit |
| Ex R- | Respondent's Exhibit  |
| SF    | Stipulations of Fact  |
| TR    | Transcript            |

6. Matthew Schottmiller did not testify at the public hearing. (TR, p.104.)
7. In August 1992, Complainant telephoned Respondent's office in regard to serving as a volunteer Scout leader. (Ex R-1; TR, p.83.)
8. The Complainant was told that in order to serve as a volunteer Scout leader, she would have to take the Scout Oath which includes an oath to do one's duty to God. (TR, p.101.)
9. In January 1993, Complainant completed an application on behalf of her son, deliberately striking through the word "God." (TR, pp.74, 76.)
10. The Respondent returned that application to the Complainant. (Ex C-4.)
11. At the public hearing, Complainant did present an undated "Adult Volunteer Application" on which she had struck out the word "God." (Ex C-4.)
12. Even though Complainant did not recall submitting the application, the Complainant's present complaint is based on her conversation with Mr. Beauregard. (TR, p.106.)
13. Thereafter the Complainant filed her complaint, dated December 8, 1992, with the Pennsylvania Human Relations Commission.
14. Boy Scouts of America, not a party here, is a national, charitable, youth membership organization which provides volunteer-led programs, including the Boy Scouting and Cub Scouting programs, to youths who join as members. (Ex R-50.)
15. The three aims of Scouting are (a) citizenship; (b) growth and moral strength in character; and (c) mental and physical development. (Ex C-8, p.13.)



16. The Boy Scout organization was "intended to supplement and enlarge modern educational facilities in activities in the great and healthful out-of-doors where may be better developed physical strength and endurance, self-reliance, and the powers of initiative and resourcefulness, all for the purpose of establishing through the boys of today the very highest type of American citizenship." (Ex. R-50, p.5.)

17. The program of Scouting is one "designed to achieve the objectives in character development, citizenship training, and mental and physical development." (Ex R-50, p.17.)

18. The purpose of Respondent Chester County Council is the promotion and supervision of Scouting within the limits of Chester County, which program includes the "building of true manly character, and instilling into the boys of Chester County the virtues of loyalty, self-reliance, alertness, physical fitness and kindred values." (Ex C-6.)

19. The specific membership requirements of Scouting are:

- a. Tiger Cub - must be in first grade or be age seven, but not yet eight;
- b. Cub Scout - must have completed first grade, but not have completed third grade, or be age eight or nine;
- c. Webelos Scout - must have completed third grade or be age ten, but not yet completed the fifth grade or reached age eleven and a half, whichever is later;

d. Boy Scout - must have completed fifth grade or be age eleven; or have earned the Arrow of Light Award, but not have reached age eighteen;

e. Varsity Scout - must be at least age fourteen and not yet eighteen. (Ex R-49, p.6.)

20. The purpose of the Boy Scouts of America is "to promote through organization and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in Scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred values using the methods which are now in common use by Boy Scouts." (Ex R-50.)

21. The policy of the Boy Scouts of America on the issue of religious instruction is that it is the Scout's parent or other organization with which the member is connected that is responsible for giving attention to religious life. (Ex R-50.)

## CONCLUSIONS OF LAW

1. The parties have complied with the procedural prerequisites to a public hearing in this matter.
2. The Respondent, Chester County Council of the Boy Scouts of America, is not a public accommodation under the Pennsylvania Human Relations Act.

## OPINION

This matter arises out of a complaint filed by Margaret Downey-Schottmiller (hereinafter "Complainant") against Chester County Council, Boy Scouts of America (hereinafter "Respondent"), on or about December 8, 1992, at Docket No. P-3986.

In her complaint, the Complainant alleges that she was refused membership as a volunteer of Respondent's organization because of her religious belief, non-theist (Free Thinker). The Complainant further alleges that Matthew Schottmiller, her minor son, was also refused membership because of his religious belief, non-theist. (Matthew Schottmiller was not a named complainant and is over twenty-one years of age. He did not testify at the public hearing.) Specifically, the Complainant alleges that she was denied membership because of her beliefs and her unwillingness to swear the Scout oath of duty to God.

The Pennsylvania Human Relations Commission (hereinafter "the Commission" or "PHRC") investigated the Complainant's allegations and at the conclusion of the investigation concluded that probable cause existed to credit the Complainant's allegations.

Thereafter, PHRC attempted to eliminate the alleged discrimination through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, PHRC notified the parties that it had approved a public hearing. Thereafter, Respondent filed a Motion for Rescission of Probable Cause, which was denied by PHRC Motions Commissioner Raquel Otero de Yienst.

The public hearing in this matter was held in West Chester, Pennsylvania, on May 18, 19 and 20, 1999, before Hearing Panel Chairperson Raquel Otero de Yiengst. Phillip A. Ayers, Esquire, served as Panel Advisor to Commissioner Yiengst. Pamela Darville, PHRC Assistant Chief Counsel, represented the state's interest in the complaint; James Grafton Randall, Esquire, of Anaheim, California, represented the Complainant; and Carla A. Kerr, Esquire, and George A. Davidson, Esquire, represented the Respondent. Complainant and Respondent filed post-hearing briefs in this matter on June 1, 1999. Commission Counsel joined in Complainant's brief.

The instant case places several important legal issues before the Commission. The first argument that Respondent makes is that it is not a public accommodation under the Pennsylvania Human Relations Act. Two related questions are whether the Respondent is a religious organization or a "distinctly private" organization and, therefore, exempt from the Pennsylvania Human Relations Act (hereinafter "PHRA or "the Act").

Firstly, we must look at the public accommodation issue. A public accommodation, as defined by the Act, is as follows:

*Any accommodation, resort or amusement which **is open to, accepts or solicits the patronage of the general public**, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or anyplace where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors,*

*retail stores and establishments, theaters, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, 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, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but **shall not include any accommodations which are in their nature distinctly private.** (Emphasis added.)*

(43 P.S. §954(e).) Section 5 of the Act, 43 P.S. §955, further provides:

*It shall be an unlawful discriminatory practice. . .*

*(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation, resort or amusement to:*

*(1) Refuse, withhold from, or deny to any because of his race, color, sex, **religious creed.** . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement. . . (Emphasis added.)*

Also, Section 12 of the Act provides:

*(a) 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.*

Upon review of the facts specifically limited to this case, the Commission finds that the Respondent Chester County Council of the Boy Scouts of America is not a public accommodation under the Pennsylvania Human Relations Act. Therefore, the Respondent is not subject to the Commission's jurisdiction.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARGARET DOWNEY-SCHOTTMILLER,  
Complainant

v.

DOCKET NO. P-3986

CHESTER COUNTY COUNCIL OF  
THE BOY SCOUTS OF AMERICA,  
Respondent

FINAL ORDER

AND NOW, this 27<sup>th</sup> day of July, 1999, after review of the entire record in this matter, a majority of the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, and hereby

ORDERS

that the instant complaint be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Robert Johnson Smith  
Robert Johnson Smith, Chairperson

Attest:

Gregory J. Celia, Jr.  
Gregory J. Celia, Jr., Secretary

## CONCURRING OPINION

I concur with the decision of the Commission finding that the Respondent Chester County Council of the Boy Scouts of America, is not a "public accommodation." In addition, I am providing this concurring opinion so the parties will understand the reasoning behind my decision in this matter.

As I see it, the threshold question in this case is whether the General Assembly intended to include organizations like the Chester County Council of the Boy Scouts of America within the statutory language defining a "public accommodation." The Act defines "public accommodation" as follows:

*Any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or anyplace where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors, retail stores and establishments, theaters, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, 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, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but shall not include any accommodations which are in their nature distinctly private.*

This language sets forth fifty specific examples of regulated "public



accommodations", including inns, taverns, roadhouses, motels, hotels, restaurants, ice cream parlors, hospitals, swimming pools, theaters, public libraries and universities. In my opinion, none of the listed entities remotely resemble an organization like the Chester County Council of the Boy Scouts of America.

Numerous courts across the country have addressed this same issue. The reasoning coming closest to my views on this matter is set forth in Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir. 1993). In that case, the U.S. Court of Appeals for the Seventh Circuit addressed the question of whether the Boy Scouts could be considered a "place of public accommodation" for purposes of applying Title II of the Civil Rights Act of 1964. After reviewing the statutory language, the Court held that Title II did not apply because the Scouting organization was not a "place of public accommodation." *Id.* at 1278.

Unlike Title II, the term defined in the PHRA is not "place of public accommodation," but simply "public accommodation." Nevertheless, the fifty examples provided in the definition of "public accommodation" are all public places. Moreover, when setting forth what constitutes an unlawful discriminatory practice, the Act states:

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation, resort or amusement to:

(1) Refuse, withhold from, or deny to any because of his race, color, sex, religious creed. . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement. . . (Emphasis added.)

I believe the use of the phrase "place of public accommodation" here is

significant. The list of public accommodations that appears in the Act, coupled with this language from Section 5, would appear to indicate that the General Assembly intended to regulate places of public accommodation, where a person could be denied access, and not to regulate organizations such as the Chester County Council. Absent specific statutory language evidencing a clear intent on the part of the General Assembly to include groups like the Chester County Council of the Boy Scouts of America within the definition of "public accommodation" under the Act, I have to conclude that the Respondent in this case is not a public accommodation and, therefore, is not subject to the Commission's jurisdiction under the Act.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By: M. Joel Bolstein, Commissioner

## DISSENTING CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the Complainant and Respondent.
2. The PHRC has jurisdiction over the subject matter of the complaint under the Pennsylvania Human Relations Act (hereinafter "Act" or "PHRA").
3. The parties have complied with the procedural prerequisites to a public hearing in this matter.
4. The Respondent in this matter is a public accommodation, as that term is defined under the Act.
5. It is an unlawful, discriminatory practice for any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation, resort or amusement, *inter alia*, to refuse, withhold from or deny to any person because of his or her religious creed, either directly or indirectly, any of the accommodations, advantages, facilities, or privileges it offers.
6. The Respondent has refused, withheld from and denied accommodations, advantages and privileges to the Complainant because of her religious creed.
7. The Respondent has not demonstrated by a preponderance of evidence that it should be exempt from the prohibition against religious discrimination.
8. The Respondent is neither a religious organization nor a fraternal nor a distinctly private organization.
9. Where the Commission rules that a respondent has engaged in an unlawful practice, under Section 9 of the PHRA the Commission may issue a cease

and desist order, and it may order such affirmative action as in its judgment will effectuate the purposes of the Act.

## DISSENTING OPINION

This matter arises out of a complaint filed by Margaret Downey-Schottmiller (hereinafter "Complainant") against Chester County Council, Boy Scouts of America (hereinafter "Respondent"), on or about December 8, 1992, at Docket No. P-3986.

In her complaint, the Complainant alleges that she was refused membership as a volunteer of Respondent's organization because of her religious belief, non-theist (Free Thinker). The Complainant further alleges that Matthew Schottmiller, her minor son, was also refused membership because of his religious belief, non-theist. (Matthew Schottmiller was not a named complainant and is over twenty-one years of age. He did not testify at the public hearing.) Specifically, the Complainant alleges that she was denied membership because of her beliefs and her unwillingness to swear the Scout oath of duty to God.

The Pennsylvania Human Relations Commission (hereinafter "the Commission" or "PHRC") investigated the Complainant's allegations and at the conclusion of the investigation concluded that probable cause existed to credit the Complainant's allegations.

Thereafter, PHRC attempted to eliminate the alleged discrimination through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, PHRC notified the parties that it had approved a public hearing. Thereafter, Respondent filed a Motion for Rescission of Probable Cause, which was denied by PHRC Motions Commissioner Raquel Otero de Yiengst.

The public hearing in this matter was held in West Chester, Pennsylvania, on May 18, 19 and 20, 1999, before Hearing Panel Chairperson Raquel Otero de Yiengst. Phillip A. Ayers, Esquire, served as Panel Advisor to Commissioner Yiengst. Pamela Darville, PHRC Assistant Chief Counsel, represented the state's interest in the complaint; James Grafton Randall, Esquire, of Anaheim, California, represented the Complainant; and Carla A. Kerr, Esquire, and George A. Davidson, Esquire, represented the Respondent. Complainant and Respondent filed post-hearing briefs in this matter on June 1, 1999. Commission Counsel joined in Complainant's brief.

The instant case places several important legal issues before the Commission. The first argument that Respondent makes is that it is not a public accommodation under the Pennsylvania Human Relations Act. Two related questions are whether the Respondent is a religious organization or a "distinctly private" organization and, therefore, exempt from the Pennsylvania Human Relations Act (hereinafter "PHRA or "the Act").

Firstly, we must look at the public accommodation issue. A public accommodation, as defined by the Act, is as follows:

*Any accommodation, resort or amusement which **is open to, accepts or solicits the patronage of the general public**, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or anyplace where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors,*

*retail stores and establishments, theaters, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, 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, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but **shall not include any accommodations which are in their nature distinctly private.** (Emphasis added.)*

(43 P.S. §954(e).) Section 5 of the Act, 43 P.S. §955, further provides:

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*(1) Refuse, withhold from, or deny to any because of his race, color, sex, **religious creed.** . . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement. . . (Emphasis added.)*

Also, Section 12 of the Act provides:

*(a) 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 specific question of whether the Respondent is a public accommodation has generated much debate in recent years. There are a number of cases which have defined "public accommodation" very narrowly. Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir.), *cert. denied*, 510 U.S. 1012, 114 S.Ct. 602, 126 L.Ed. 2d 567 (1993); and Seabourn v. Coronado Area Council, BSA, 257 Kan. 178, 891 P.2d 385 (Kan. 1995). These cases interpret public accommodation to

be applied only to a "place." The Pennsylvania Human Relations Act has always been construed broadly and, in effect, the Act was amended to drop the limitation of a "place." In the instant case, the Respondent Chester County Council is open to and solicits the general public for participation in its activities. There are a number of cases where a business purpose or business establishment was required for the applicability of a statute. Schwenk v. Boy Scouts of America, 275 Or. 327, 551 P.2d 465 (1976); also Seabourn, *supra*. However, the Pennsylvania Human Relations Act does not require that an entity or organization have a "business purpose." Another case, Quinnipiac Council, Boy Scouts of America v. Commission on Human Rights, 204 Conn. 287, 528 A.2d 352 (1987), more accurately reflects the way the Pennsylvania statute should be interpreted. In Quinnipiac, the Court stated:

*We can discern no reason to interpolate a "business" limitation into the legislature's unadorned reference to any establishment. Like the question of situs, the question of coverage must reflect the legislative purpose of eliminating discriminatory conduct by those who serve the general public.*

The Court in Quinnipiac further stated:

*Although no private organization is duty-bound to offer its services and facilities to all comers, once such an organization has determined to eschew selectivity, under our statute it may not discriminate against the general public.*

Certainly the Respondent in the instant case has "eschewed" selectivity in its membership. Any child of the appropriate age, with a parent's permission, can join the Respondent's organization if he recites an oath, pays a fee, and pledges to attend meetings. In fact, the Respondent actively advertises for new members and



volunteers. Moreover, the Respondent appears to be committed to admitting as many members as possible. Therefore, for the purposes of the PHRA, the Respondent is a public accommodation.

The next argument made by the Respondent Chester County Council, Boy Scouts of America, is that it is a religious organization. The evidence produced at the public hearing on this issue is very clear. The Respondent is a corporation "irrevocably dedicated to the charitable and educational purposes of carrying out the program of the Boy Scouts of America." Most, if not all, of the Respondent's witnesses testified that there was a duty to God requirement in the oath and a Declaration of Religious Principles which stressed the importance of the individual's religious duties. However, throughout all of the handbooks, manuals and other evidence presented at public hearing, the responsibility of religious instruction is that of the Scout's parents or organization.

A requirement that an individual believe in God and/or a requirement that an oath espousing God be repeated does not make an organization private or religious. Jacques v. Hilton, (D.N.J.) 569 F.Supp. 730 *aff'd*. (3rd Cir. 1984) 738 F.2d 422. In reviewing the record, while the religious composition of the Respondent is extremely varied, there is no uniformity of religious belief.

The Respondent accepts members of various religions including, but not limited to, Catholics, Jews, Buddhists, Hindus, Unitarians, and Deists. Certainly the Respondent recognizes that there are numerous interpretations as to the concept

of God, and what it means to "believe in God." Therefore, it is difficult to discern how the Respondent could attack this vague criterion to membership.

In addition, there are some guidelines that the Commission can borrow in determining whether Respondent is a religious organization. In EEOC v. Kamehameha Schools, 990 F.2d 458, *cert. denied*, 114 S.Ct. 439 (9th Cir. 1993), the Court wrestled with trying to make this determination. The Court in Kamehameha listed seven factors in making this determination:

1. whether a religious organization ever controlled or supported the school;
2. whether the school was affiliated with any denomination;
3. whether its advertised purpose was essentially religious;
4. the extent to which it required its faculty to be religiously affiliated;
5. the extent to which it required its members to be religiously affiliated;
6. the extent to which its activities had religious overtones; and
7. whether the curriculum was taught from a secular perspective or a religious one.

Reviewing the record in the instant case in light of the above-mentioned factors, the Respondent clearly is not a religious organization and not entitled to a religious exemption under the PHRA. As indicated before, none of the documents presented at hearing show a religious purpose, or mission, in any of the programs. The Declaration does not require a belief in God. The Respondent is not tied to a particular religious entity. There is no requirement that any Scout or Scout leader be trained by any religious organization. Finally, there is no evidence that any

religious organization controls programs or services of the Respondent. Therefore we must conclude that the Respondent is not a religious organization.

Next, we move to the Respondent's argument that it is a distinctly private organization and, therefore, exempt from the PHRA. The case law is clear that Respondent Chester County Council has the burden of proving that it is a "distinctly private" organization. United States v. Lansdowne Swim Club, (E.D. Pa. 1989) 713 F.Supp. 785, *aff'd*. 894 F.2d 83; Nesmith v. Young Men's Christian Association of Raleigh, North Carolina, 397 F.2d 96 (4th Cir. 1968). In the instant case, the Respondent cannot meet its burden. Clearly, through its programs and activities, Respondent openly solicits the participation, involvement and support of the general public. There are approximately 9,000 members of Respondent Chester County Council, alone. The Boy Scouts of America is promoted through the media, and through its public functions such as golf tournaments, and other charitable activities. Testimony at the public hearing showed that the Respondent actively seeks the attendance of the public at various functions (Ex C-9; Ex R-14). A review of the extensive record before the Commission makes it crystal clear that the Respondent is not "distinctly private."

Respondent also argues in its brief that the Boy Scouts of America and Respondent are fraternal organizations and therefore exempt from the PHRA. Once again, there is nothing in Respondent's manual, handbook, guidelines, or policies that would indicate that it is a fraternal organization and therefore exempt from the PHRA. As stated above, the Respondent has not met its burden of showing that it

is a fraternal or private organization. The Respondent cites the case of Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S.Ct. 1965 (1972) in support of this argument. However, the Moose Lodge case is clearly distinguishable from the instant case. The Moose Lodge was a local chapter of a national fraternal organization; it was not publicly funded; and only members and guests were allowed in the Lodge. Furthermore, the only way to become a member was by an invitation of a current member. The Respondent in the matter before the Commission does not fit within the confines of the Moose Lodge case.

The dissent would find that the Respondent is a public accommodation under the PHRA, and that the Respondent is neither a religious organization, a private organization, nor a fraternal organization.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By: Raquel Otero de Yienst, Commissioner  
Theotis W. Braddy, Commissioner