

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by William L.
Wilson, and his successor,
Marilyn E. McClure, Commissioner,
Department of Human Rights,

Complainant,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

VS.

The United States Jaycees,

Respondent.

The above-entitled matter came on for hearing on April 23, 1979, before State Hearing Examiner George A. Beck in the Hearing Room of the Minnesota

Department of Human Rights on the Fifth Floor of the Metro Square Building located in Saint Paul, Minnesota. The hearing continued to the following day. The final written brief in this matter was filed on September 11, 1979, and the record closed on that date.

Richard L. Varco, Jr., Special Assistant Attorney General, 240 Brener Building, Saint Paul, Minnesota 55101, appeared on behalf of the Complainant.

Clay R. Moore, Esq. of the firm of Mackall, Crouse and Moore, 1100 First National Bank Building, Minneapolis, Minnesota 55402, and Carl D. Hall, Jr., Esq. of the firm of Hall, Sublett, McCormick and Andrew, 1776 Williams Center, Tulsa, Oklahoma 74172, appeared on behalf of the Respondent.

The following witnesses testified at the hearing: Lowell Larson, Valdis Vavere, Daniel Aberg, Kathryn Ebert, Kathleen Hawn, Sally Pedersen, Donald G. Varnadore and Gary W. Flakne.

Ninety written exhibits were offered and received on behalf of the Complainant and ten written exhibits were offered and received on behalf of the Respondent. A list of exhibits is attached to this Report.

Based upon the testimony, exhibits and briefs filed herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Matters

1. That on December 14, 1978, a charge of discrimination was filed with the Department of Human Rights by four Members of the St. Paul Chapter of the United States Jaycees, including its president, alleging a violation of Minn. Stat. Sec. 363.03 by the respondent. (Ex. 89) A copy of the charge was served upon the respondent by certified mail on December 15, 1978. (Exs. 90A, 90B, 91, 92)

2. On December 19, 1978, a charge of discrimination was filed with the Department of Human Rights by four members of the Minneapolis Chapter of the United States Jaycees, including its president, alleging a violation of Minn. Stat. Sec. 363.03. (Exs. 81, 82, 83, 84) A copy of the charges was served upon the respondent by certified mail on December 20, 1978. (Exs. 85, 86, 87, 88A, 88B)

3. Subsequent to the filing of these charges, the Department conducted an investigation of the allegations contained in the charges, and on January 25, 1979, the Commissioner of the Department of Human Rights found probable cause to believe that the respondent had committed a violation of Minn. Stat. Sec. 363.03, subs. 3, 6 and 7 (1978). This finding of probable cause was served upon the respondent, together with a notice of and order for hearing in this matter, by certified mail on January 25, 1979. (Exs. 93, 94, 95)

4. The Department of Human Rights has attempted to conciliate this matter without success.

5. On February 27, 1979, the respondent filed an action in the United States District Court for the District of Minnesota entitled, The United States Jaycees v. William L. Wilson, Commissioner, Minnesota Department of Human Rights, and Warren Spannaus, Attorney General of the State of Minnesota. In that action, the U.S. Jaycees asked that the Court declare Minn. Stat. Sec. 363.01, subd. 18 and Minn. Stat. Sec. 363.03, subd. 3, 6, and 7, unconstitutional facially and as applied to the respondents in this administrative proceeding. The U.S. Jaycees asked the Court to abstain from a determination of the merits of the constitutional claims until the conclusion of this administrative proceeding.

6. In this administrative proceeding, the respondent has stated its intention to reserve for determination by the United States District Court all federal constitutional claims challenging the validity and application of the afore-cited statutes. This reservation is asserted under the authority of England v. Louisiana State Board of Medical Examiners, 375 U.S.

411, 11 L.Ed.2d. 440, 84 S. Ct. 461 (1964). The England case generally holds that a federal court litigant who is remitted to state court under the doctrine of abstention may preserve his right to return to federal court for the disposition of his federal constitutional claims where he refuses to litigate his federal constitutional claims in state court. The complainant has consented to this procedure.

7. By Order dated June 11, 1979, U.S. District Judge Miles Lord dismissed the U.S. Jaycees action without prejudice. In its Order, which was based upon a stipulation by the parties, the Court stated that the U.S. Jaycees could, pursuant to England, supra, refrain from litigating any constitutional claims in this state administrative proceeding and subsequently recommence the federal action to assert said federal constitutional claims in the event that the state proceedings were determined adversely to the U.S. Jaycees.

The U.S. Jaycees

8. The United States Jaycees is a non-profit corporation organized under the law of the state of Missouri (T. B6, Ex. J) with its headquarters located in Tulsa, Oklahoma. (T. B7) The organization is exempt from federal income taxes. (Ex. H, Ex. 1; T. B36) There are approximately 8,800 local Jaycee chapters and 51 state organizations affiliated with the U.S. Jaycees. (T. B9) Nationwide, there are approximately 386,000 individual members. (T. B21) The respondent maintains a regional office at Chaska, Minnesota. (Ex. 80, p. 7) The ultimate policymaking body of the U.S. Jaycees is an annual national convention consisting of delegates from each local chapter. (T. B16) The convention elects a national President, who, together with a Board of Directors and an Executive-Committee, governs the organization. The State Presidents constitute a majority of the national Board of Directors. (T. B14-16; Ex. 1, pp. 9-11)

9. The By-laws of the U.S. Jaycees define an individual member (or "regular member"; T. A71) as follows:

BY-LAW 4-2.

INDIVIDUAL MEMBERS

Young men between the ages of eighteen (18) and thirty-five (35), inclusive, of Local Organization members in good standing in this Corporation shall be considered Individual Members of this Corporation (unless the ages for membership shall have been changed by the State Organization Member as hereinabove permitted by By-Law 4-4.A.). Such Individual Members shall be qualified by, and represented through, the local Organization member so long as he shall pay the dues to the local Organization specified in its by-laws, constitution or articles of incorporation (which shall include a subscription to FUTURE Magazine). If any Individual Member shall arrive at the age of thirty-six (36) after the beginning of his Individual Membership Anniversary Date, such member shall be deemed an Individual Member until his next Anniversary Date, or in the case of any Individual Member holding office in the Corporation, a State Organization Member, or a Local Organization member, until completion of such term of office; provided that no Individual Member shall be permitted to hold any such office if he has reached age thirty-six (36) prior to the commencement of the term of such office, except as otherwise provided herein.

(Ex. 1, pp. 3-4; T. B12)

10. An associate individual member is defined in the by-laws in following language:-

BY-LAW 4-3.

ASSOCIATE INDIVIDUAL MEMBERS

An Associate Individual Member is a business concern, association, group or individual not qualified by these By-Laws and Policy to be an Individual Member of a Local Organization Member. An Associate Individual Member is not an Individual Member of The United States Jaycees and shall not have the right to vote or the right to be an officer or director in The United States Jaycees, a State Organization Member or a Local

organization Member.
(Ex. 1, p. 4; T. A159; T. B12) An associate member may participate in
Jaycee programs, but cannot receive awards. (T. A49, A156, A161)

11. By-laws describe a local organization member (or "local chapter") as follows:

BY-LAW 4-4.

LOCAL ORGANIZATION MEMBERS

A. Any young men's organization of good repute existing in any community within the United States, organized for purposes similar to and consistent with those of this Corporation, and whose officers and Individual Members are young men between the ages of eighteen (18) and thirty-five (35) years of age, inclusive, shall be eligible for affiliation as a local Organization Member; provided, however, that any State Organization Member, at its option, may restrict the minimum age of members for individual Members of such State Organization Member to an age more than eighteen (18) but not more than twenty one (21) years of age.

(Ex. 1, p. 4; T. B10)

12. These by-laws allow women to be associate members, but not regular members and therefore prohibit women from voting or serving as a local chapter president, vice president or director, or as a state organization -officer or regional or district director, or as a national officer or director. (T. A28, A107) Roth the Minneapolis and St. Paul Chapters, which

are local organization members, are currently in violation of By-law 4-4, (T. B11) and have adopted local By-laws which permit women to be individual members and, therefore, conflict with the respondent's by-laws. (Ex. 16,

17)

13. In 1975 the national Jaycee convention voted by a margin of approximately 90% to 10% against changing a by-law to allow local chapters to admit women as regular members. (T. B22; Ex. 26, p. 20) That year, however, the national leadership set up a "pilot membership program" to allow local chapters in up to five states to accept women as regular local and state members. Three states, Alaska, Massachusetts, and the District of Columbia, voted to participate. (T. B23) The Minnesota State Convention voted in late 1975 or early 1976 not to participate in the "pilot program". (T. A121, B24) The "pilot program" was terminated by the National President in

June of 1978. (T. B24) The 1978 national convention defeated, by a margin of approximately 78% to 22%, another motion to give local chapters the option to admit women as regular members. (T. B25; Ex. 26, p. 20)

The Local Chapters and Women Members

14. The Minneapolis Chapter of the U.S. Jaycees has admitted women as regular members since 1974, and has been in violation of PI-law 4-4 since that time. (T. A120, A157) The chapter currently has approximately 150 to 180 women members of a total of 430. (T. A123; Ex. 57-60) Eight women now serve on the 26-person Board of Directors and women serve in the capacity of vice president and state delegate. (T. A124) Serving as an officer or director provides substantially greater leadership training and responsibility than general membership or serving as the chair of a single committee. (T. A161, A177, A197) From 1975 to June of 1978, the chapter has

been subjected to sanctions for violation of the respondent's by-laws, such as its members being ineligible for state or national office, its membership not being counted in computing votes at national conventions, and ineligibility for hosting national events. (T. A122) A Minneapolis woman member nominated by the chapter for a national award was not considered. (T. A141) By letter dated December 15, 1978, the Minneapolis Chapter was advised by the respondent's President that a January 19, 1979 meeting of the respondent's Executive Board of Directors in Tulsa would vote on a motion to revoke the charter of the chapter for violation of the by-laws which restrict individual membership to men. (Ex. 78; T. A123, B27; Ex. 26, p. 21)

15. The St. Paul Chapter of the U.S. Jaycees has admitted women as regular members since 1975. (T. A168) Currently, the chapter has 400 members of whom approximately 100 are women. Women also serve on the chapter's Board of Directors. (T. A169; Ex. 5, 79) Because of its admission of women as full members, the chapter has had sanctions imposed against it similar to those imposed against the Minneapolis Chapter. (T.

A168) By letter dated December 15, 1978, the St. Paul Chapter was also advised by the National President that a January 19, 1979 meeting in Tulsa of the respondent's Executive Board of Directors would vote on a motion to revoke the chapter's charter for violation of the by-laws which restrict individual membership to men. (Ex. 77; T. A168, B27)

16. Kathryn Ebert has been a member of the Minneapolis Chapter of the Jaycees since February of 1975. She holds a B.A. degree from Northwestern University and is an interior architect employed by Dayton's Commercial Interiors. She is currently the project team leader for the interior design of the new Pillsbury Center in downtown Minneapolis. (T. A188-189) In 1976, Ebert became chairman of the chapter's training and development committee and an ex officio member of the chapter's Board of Directors. Later in 1976, she became a member of the Board and headed the civic affairs committee. From 1976 to May of 1978, Ebert served as a Vice President of the Jaycee Foundation and as an executive committee member. As a Vice President, she supervised four committees and approximately 100 people. In April of 1977, Ebert was a candidate for President of the Minneapolis Chapter. (T. A190)

Ebert testified that her Jaycee participation allowed her to acquire speaking skills, leadership skills and organizational skills at a young age. She believes that this leadership development enabled her to gain a promotion.

tion by her employer to project team leader. (T. A191-192) She testified that being a Vice President was more valuable in terms of leadership development than being a committee chairman. (T. A197) She also commented that working with men in the Jaycees was beneficial since about 90% of her clients are men. (T. A195)

17. Kathleen Hawn has been a member of the St. Paul Chapter of the Jaycees since 1976. She is a graduate of Archbishop Murray High School in St. Paul and has been employed by Minnesota Mutual Life Insurance since July

of 1977, where she is currently a methods analyst. (T. A198, A202)

While a

Jaycee member, she has served as secretary and then director of the human natural resources committee, as a state delegate, and as a district director. She has chaired three major events for the St. Paul Jaycees and has received several awards including a gold key as an outstanding director. (T. A199)

Ms. testified that the Jaycees "Speak Up" program developed her speaking abilities and aided in her presentations at work. As a Jaycees director, she supervised others for the first time, learned how to plan and delegate, and gained self-confidence PI working with management caliber people. (T. A204, A206) Ms. Hawn testified that taking one of her superiors to the Jaycees Bcasses Night, at which she received an award, contributed to her later promotion to a job where she supervises three men and one woman,. (T. A201-203) Approximately 80% of the people she works with are men. (T. A2 0 5)

18. Sally Pedersen has been a Minneapolis Jaycee for two years and prior to that was a Jaycee in Rochester, New York for 31 years. (T. A207)

She attended the University of Rochester and is currently employed as a customer support representative with Eastman Kodak Co. She began her career with Kodak as a lab technician and when she inquired about advancement, the personnel department suggested that she join the Jaycees. She later obtained her present position with a resume of Jaycee activities. (T. A210-211) She has recently successfully interviewed for a new position with Kodak. She had separate interviews lasting 30 to 40 minutes with seven men, each of whom inquired about her Jaycee activities. (T. A212) Her Jaycee activities have included serving on the Board of Directors in 1977-78. She is currently a vice president and supervises four committees and 40 to 50 people. (T. A208)

The Relationship of Local Chapters and the U.S. Jaycees

19. The U.S. Jaycees maintain a staff of approximately 83 to 84 persons in Tulsa. (T. B52) The respondent employs an executive director to develop programs with appropriate materials which may be implemented by local chapters. (Ex. 98, No. p-3) These programs are designed to accomplish the three Jaycee goals, namely, individual development, community development and development of management ability. (T. A31-32; B41; Ex. 47) The programs or materials provided by respondent to local chapters relative to individual development include personal dynamics (Ex. 22), communication

dynamics (Ex. 23), a speak-up program (Ex. 53, 38) and personal financial planning. (Ex. 38, 54) The program kits prepared by the U..S. Jaycees to promote community develcpment include the Junior Athletic Championships (Ex. 40), Shooting Education, CPR, Energy Program, Governnent Affairs, and Institutional Chapters. (Ex. 39) The respondent publishes a wide range of materials related to chapter and state organization management such as Leadership Dynamics (Ex. 41, 42), Officers and Directors Guide (Ex. 6, 52), Chapter President's Management Handbook (Ex. 2) and others (Ex. 37, 43, 44, 51).

20. The local chapter may implement or decline to implement programs organized by respondent or may modify the programs to fit the local situation. (T. A34, A95, A99) The respondent believes that a new program is -successful if approximately 1,000 of 8,800 local chapters pick it up. (T. B40) There are incentives to local chapters in the form of national awards for adoption of programs. (T. A109) Both the Minneapolis and St. Paul Chapters have adopted respondent's CPR program. (T. A154, A186) The state and local organizations may also initiate their own programs without respondent's approval (T. A94), for example, the state organization sponsors a "Jelly with the proceeds of jelly sales being donated to help the mentally retarded (T. A96; Ex. 61); the Minneapolis Chapter sponsors an annual free Christmas dinner (T. A138, A150); and the St. Paul Chapter sponsors the Patty Berg Golf Classic. (T. A178; Ex. 3)

21. The respondent also provides a wide range of products including personal items, travel accessories, casual wear, officer pins, awards, and (gifts (Ex. 15) which may be purchased by members or non-members both through the mail and by telephone from the national office. (Ex. 80, p. 17; T. A80, B57) The products are featured in respondent's magazine. (Ex. 25) The Minnesota state office also maintains a number of respondent's products at its office for sale to local chapters and others. (T. A78, B57) The state organization receives a commission from respondent for its promotion of U.S. Jaycee products. (T. A79)

22. The Jaycee organization puts a great deal of emphasis on recruitment of new members. (Ex. 10, 11) The Minnesota State President spends approximately 80% of his time on recruitment related activities (T. A45), while the Minneapolis and St. Paul Presidents spend approximately half of their time on recruiting new members. (T. A125, A170) The respondent provides materials (Ex. 24, 45, 66, 70, 72, 73), contests and awards (T. A47, A58) and personnel (T. A53) to encourage and aid in signing up new members. The state and regional officers encourage the local chapters to

acquire new members. (T. A132; Ex. 48, 50) The Minneapolis Chapter President estimated that 90% of his conversations with the state President and other officers concern recruitment. (T. A130; Ex. 69, 71)

23. The actual recruiting takes place at the local chapter level. (Ex. 12, 13; T. A90) The local chapter initially determines an applicant's eligibility (T. A91) although the Minneapolis and St. Paul Board of Directors routinely approve all applicants who are over 18 but not yet 35 years of age. (T. A135, A175-176) In Minneapolis and St. Paul, a substantial number of members are recruited from the ranks of corporate management. (T. A183, A139, A148) This involves asking corporations to financially sponsor several of their employees. (Ex. 12; T. A125) Membership solicitation includes the statement that both men and women are eligible for membership. (Ex. 10, 11, 12) Some corporations have conditioned sponsorship upon allowing women as members. (T. A138-139)

A person accepted as a member by the local chapter automatically becomes a member of the Minnesota Jaycees and the U.S. Jaycees. The new

regular member dues forwardable to the state Jaycee organization is \$24, and

the regular member renewal amounts to \$19. Dues payment based on a computerized billing from the respondent (Ex. 56), are submitted on a monthly basis to the state organization which retains \$12.50 and remits the balance to the respondent. The respondent then sends along \$2.50 to the Jaycee International organization. (Ex. 35A-F; T. A72-74)

Other Testimony

24. Other national service organizations similar in structure to the U.S. Jaycees, such as Kiwanis International (Ex. A, p. 2; Ex. B), the International Association of Lions Club (Ex. D, p. 13), Rotary International (Ex. F, p. 217), 'Optimist International (Ex. G, p. 3) and the Association of Junior Leagues, Inc. (Ex. C, p. 4) have provisions in their constitutions or by-laws restricting membership on the basis of sex. (T. B65-66)

25. Undisputed testimony at the hearing showed that the Jaycee organization is different from other organizations in that it has a young, active membership (T. A87) and offers individual development programs in the areas of personal, leadership and communications dynamics which are either unavailable or not available to the same degree in other organizations. (T.

B54-55; Ex. 80, p. 6) A local chapter whose charter is revoked would suffer loss of the substantial goodwill and name recognition of the title 'Jaycees' (T. A137, A140, A178, A182) as well as the loss of participation in Jaycee state and national conventions, seminars, insurance programs and awards, such as the Ten Outstanding Young Men selection. (Ex. 55, 76)

26. Gary W. Flakne, a member of the Minnesota House of Representatives from 1962 to 1973, and chief author in the House of the 1967 revision of the

Human Rights statute, testified concerning that bill. (T. B68) Ube 1967 revision created the Department of Human Rights and broadened the statute to

include a new definition of discrimination in public accommodations. (T. B82) Mr. Flakne testified that he could not recall any consideration at the time the law was passed as to whether or not organizations such as the Jaycees would be included within the definition of "public accommodations" (T. B84, 90)

27. That any of the foregoing Findings of Fact which might properly be termed Conclusions of Law are hereby adopted as such.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. That the Department of Human Rights gave proper notice of the hearing in this matter; that the Hearing Examiner has jurisdiction of this matter pursuant to Minn. Stat. Sec. 363.071 (1978) and Minn. Stat. Sec. 15.052 (1978); that the Department of Human Rights has fulfilled all relevant, substantive and procedural requirements of law or rule.

2. That the complaint issued by the commissioner in this matter was issued pursuant to Minn. Stat. Sec. 363.06 (1978).

3. Minn. Stat. Sec. 363.03, subd. 3 (1978) provides that:

It is an unfair discriminatory practice:

To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex. It is an unfair discriminatory practice for a taxicab company to discriminate in the access to, full utilization of or benefit from service because of a person's disability.

4. Minn. Stat. Sec. 363.01, subd. 18 (1978) provides the following definition:

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.

5. That the United States Jaycees discriminate on the basis of sex by denying women individual or regular membership.

6. That for the reasons set out in the Memorandum attached hereto, and incorporated herein by reference, the United States Jaycees are a place of public accommodation within the meaning of Minn. Stat. Sec. 363.01, subd. 18 (1978).

7. That the United States Jaycees has subjected the Minneapolis and St. Paul Chapters to sanctions and has announced its intention to revoke the charters of the Chapters because of their admission of women as individual or regular members.

8. That the United States Jaycees have therefore committed an unfair discriminatory practice in violation of Minn. Stat. Sec. 363.03, subd. 3 (1978).

9. Minn. Stat. Sec. 363.071, subd. 2 (1978) provides in part that:

. . . if the hearing examiner finds that the respondent has engaged in an unfair discriminatory practice, the hearing examiner shall issue an order directing the respondent to cease and desist from the unfair discriminatory practice found to exist and to take such affirmative action as in the judgment of the examiner will

effectuate the purposes of this chapter.

Pursuant to the foregoing Conclusions of Law, the Hearing Examiner makes the following:

O R D E R

It is hereby ordered that the United States Jaycees shall cease and desist and is hereby enjoined from:

(1) Revoking the charter of any Jaycee local organization member ("local chapter") or state organization member (the "Minnesota Jaycees") within the State of Minnesota or denying any privilege or right of membership, or otherwise discriminating in any manner against a local or state organization member within the State of Minnesota because either extends to women all the rights and privileges of individual or regular membership.

(2) Discriminating on the basis of sex against any member or applicant for membership of a Jaycee local chapter within the State of Minnesota with respect to the terms, conditions, or privileges of membership in the local chapters or in the Minnesota Jaycees or in the United States Jaycees.

Dated: October 9, 1979.

GEORGE A. BECK
State Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. Sec. 363.071, subd. 2 (1978), this Order is the final decision in this case and under Minn. Stat. Sec. 362.072 (1978), the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. Sec. 15.0424, and Minn. Stat. Sec. 15.0425 (1978).

MEMORANDUM

Standing to Prosecute

The respondent has maintained that the named complainant, William L. Wilson, lacks standing to prosecute this matter since a successor has been appointed and confirmed. The matter of succession of public officials in state administrative proceedings is not treated in either statute or rule.

In federal court (FRCP Rule 25(d) (i)) and Minnesota appellate practice (MRCAP Rule 143.04), succession is automatic while in district court in Minnesota substitution is by motion upon a showing that the successor intends to continue the action. (MRCAP Rule 25) In the absence of any specific state administrative rule, the request for successor should be made by a motion pursuant to 9 S.F.S. Sec. 2.213 B.

In a September 4, 1979 letter, which accompanied the complaint's final brief in this case, complainant's attorney stated that

"Commissioner

McClure intends and has intended to have this action continued."

Complain-

ant's reply brief added the present Commissioner's name to the title of the

proceedings this procedure would normally preclude any reply by the respondent, however, as a practical matter there is little for the respondent to say once the Commissioner indicates her intention to continue the prosecution

in this matter. It appears that the specific functions which the statute requires the Commissioner to do, such as service of the charge, determination of probable cause, and issuance of a complaint were in fact

performed by former Commissioner Wilson. Accordingly, since no prejudice

has been shown, it is concluded that the addition of Commissioner McClure as

a party should be allowed despite the procedural failure to accomplish the

matter by a formal motion on the record pursuant to the appropriate rule.

Constitutional Questions

As set out in Findings of Fact No. 5-7, the parties to this case have

agreed to reserve all federal constitutional claims for determination by the

United States District Court. Notwithstanding this agreement, the respondent

urges that two constitutional claims should be considered insofar as

necessary to do so in order to abide by the maxim (codified at Minn. Stat.

Sec. 645.17(3)) that statutes should not be interpreted in a manner which

would render them unconstitutional. The respondent believes that subjecting

its membership policy to the Minnesota Human Rights Act would (1) violate its First Amendment right to freedom of association, and (2) violate the due process clause of the Fourteenth Amendment since there are misdemeanor penal consequences and the statute is ambiguous and vague, requiring persons to guess at whether or not they might be included within its language. In deference to the greater expertise of the federal court and its Order relating to this matter, and recognizing that these questions would need to be redetermined upon appeal, these issues will not be extensively dealt with herein. The Examiner, after a careful review of the arguments and consideration of the authorities cited, is satisfied that the constitutional

right to freedom of association will not protect unlawful discrimination by

an organization which is not in fact private. *Bell v. Maryland*, 378 U.S. 226, 313-314, 12 L.Ed.2d 22, 84 S. Ct. 1814 (1964). Additionally, even though the Minnesota Human Rights Act contains a criminal or penal remedy,

this does not mean that, in an action for civil relief, the statute must be

construed by a criminal standard in regard to vagueness. Our court has stated that while a "criminal statute must be definite as to persons within

the scope of a statute and the acts which are penalized" (emphasis added),

. . . where a statute contains remedial and penal provisions, the former are

to be construed liberally and the latter strictly'. *State v. Moseng* en , 245

Minn. 263, 95 N.W.2d 6, 11 (1959).

Statutory Interpretation

The fundamental question to be decided in this proceeding is whether or not the United States Jaycees fall within the definition of "place of public accommodation" so that their admitted sex discrimination in regard to membership thereby becomes an unfair discriminatory practice prohibited by the Minnesota Human Rights Act. The complainant believes that the U.S. Jaycees are a "business . . . facility of any kind . . . whose goods, services, . . . privileges, advantages are extended, offered, sold or otherwise made available to the public."

The existence of a legislative history for the statutory provisions in question would, of course, be particularly valuable in regard to the question of legislative intent. No such written history exists for the 1967 legislative session which session produced a substantial revision of the human rights law including the definition in question here. The chief author of the House bill, Gary Flakne, testified concerning his recollection of the passage of the legislation. The general rule is that the opinion of one legislator cannot be equated with or even considered when ascertaining

legislative intent. 82 C.J.S. Statutes Sec. 354, Iowa St. Educ. Assoc. - Iowa Higher Educ. Assoc. v. Public Employment Relations Board, 269 N.W.2d

446, 448 (Ia. 1978), 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, Sec. 48.16 (4th ed. 1972) The most that can be gleaned from Mr. Flakne's testimony, however, is that the question of whether or not organizations such as the respondent might fall within the definition of "place of public accommodation" was simply not specifically considered by the legislature. (Finding of Fact No. 26).

. The legislature did, however, provide some direct help in ascertaining its purpose. Minn. Stat. Sec. 363.11 (1978) provides in part that, "The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof." Minn. Stat. Sec. 363.12 (1978) also declares, in part, that:

Subdivision 1. It is the public policy of this state to secure for persons in this state, freedom from discrimination;

(3) In public accommodations because of race, color, creed, religion, national origin, sex, marital status, disability and status in regard to public assistance;

As the legislative direction indicates, the Minnesota Human Rights Act is remedial legislation and as such should be liberally interpreted in order to suppress the evil and advance the remedy. 'What is called a liberal construction is ordinarily one which makes the statutory rule-or principle apply to more things or in more situations than could be the case under a strict construction. " 3 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, Sec. 60.01, at 29 (4th ed. 1972)

The courts of other states have followed this general rule in interpreting their human rights acts. In *Ohio Civil Rights Comm. v. Lysyj*, 38 Ohio St. 2d 217, 313 N.E.2d 3 (1974), the court found a trailer park to be a place of public accommodation and observed that: then determining-the scope of the "public accommodations" amendments to Chapter 4112, the commission, initially, and the courts, upon review, are to construe these statutes liberally in order to effectuate the legislative purpose and fundamental policy implicit in their enactment, and to assure that the rights granted by the statute are not defeated by an overly restrictive interpretation. 313 N.E.2d at 6.

The language of the Minnesota definition of "public accommodations" places it among those states which have broader and more general definitions as opposed to those states that specifically list the businesses covered. The more general definition has the effect of more extensive coverage. *Discrimination in Access to Public Places: A Survey of State and Federal Accommodations Laws*, 7 N.Y.U. Review of Law and Social Change 215, 242 (Spring 1978)

The pre-1967 public accommodations provision in Minnesota law (which has not been explicitly repealed) Minn. Stat. Sec. 327.09 (1978) reads as follows:

No person shall be excluded, on account of race, color, national origin, or religion from full and equal enjoyment of any accommodation, advantage, or privilege furnished by public conveyances, theaters, or other public places of amusement, or by hotels, barber shops, saloons, restaurants, or other places of refreshments, entertainment, or accommodations.

The move from this more specific definition to the existing general language would seem to Evidence a legislative intent to expand the coverage of the public accommodations provisions.

In the case of a statute which has a general applicability, its language may often appear to be ambiguous when applied to specific fact situations. It is because of this that the legislature's directives as to intent and purpose at Minn Stat, Sec. 363.11 (1978) and Sec. 363.12 (1978) assume large importance. It is often held that:

Legislative purpose may also be a valuable guide to decision in cases where the effect of a statute or the situation at hand is unclear either because the situation was unforeseen at the time when the act was passed, in which case it represents a somewhat unorthodox way of

speaking to say that the legislature had any real intent with reference to the unprovided-for case, or the statutory articulation of rule or policy is so incomplete that it cannot clearly be said to speak to the situation or issue.

2A SUTHERLAND,, STATUTES AND STATATORY CONSTRUCTION, Sec. 45.09 at 29 (4th ed. 1972) The interpretation of Minn. Stat. Sec. 363.01, subd. 18 then,

must be made with the foregoing in mind.

, -he Langauge of Minn. Stat. Sec. 363.01, subd. 18 (1978)

The respondent argues that the term "business" in the statutory definition refers only to "income or profit producing activities". According to Black's Law Dictionary (5th Ed. 1979), the term business may have a varied meaning; from "commercial activity engaged in for gain or livelihood"

to "enterprise in . which person engaged shows willingness to invest time and

capital on future outcome". The complainant has pointed out that the payment of dues by members and the return of leadership training programs by

the Jaycees is not unlike the purchase of training courses from a for-profit

organization such as Dale Carnegie. The respondent is also engaged in the

sale Of products to members and the public. Our Minnesota Supreme Court has

observed that:

When one speaks of "business" the mind naturally contemplates a commercial or industrial establishment or enterprise. That word, however, may have other and different meanings depending upon the use to which it is put. It is also defined as "that which one has to do or should do; that which one may rightfully or justifiably concern himself or meddle with; . . . that which busies, or engages time, attention, or labor, as a principal serious concern or interest. (Citation omitted)

State v. Lakewood Cemetery, 197 Minn. 501, 267 N.W. 510, 512 (1936)

Where the statute is entitled to a liberal construction, as in this case, other Courts have given the term business a comprehensive meaning so as to, for example, classify a church as a business for workers' compensation purposes. See, Meyers v. Southwest Reg. Conf. Ass'n. of Seventh Day Adventists, 230 La. 310, 88 So.2d 381, 384 (1956). Non-profit organizations such as the YMCA have been included within the federal statute despite non-profit status. Smith v. Young Men's Christian Ass'n., 462 F.2d 634, 648 (5th Cir. 1972). Similarly, in National Organization for Women, Essex (AD. Ch. v. Little-League Baseball, Inc., 127 N.J. Super. 522, 318 A.2d 33, 38 (1974), the court stated that, "We discern nothing in the statute or its underlying purposes to persuade us that what would otherwise be a place of public accommodation is any less so because its management and sponsorship is by a nonprofit or membership organization rather than a commercial enterprise" The court decided that the Little League was a public accommodation and was therefore prohibited from excluding girls from its teams. The respondent is a business within these cases and within our definition of "place of public accommodation" which is to be liberally interpreted

A related question is whether the use of the word "place" in the phrase which is actually defined and the use of the word "facility" in the definition itself serves to limit the scope of the definition to entities with identifiable physical locations so as to exclude the respondent. Although it should be noted that the respondent maintains an office in Chaska, Minnesota and that both the state and local organizations conduct their activities at various "Places" within this state, several courts have concluded that public accommodation definitions should not be so limited as urged by the respondent

In Little League Baseball, supra, the court observed that:

The statutory noun "place" (of public accommodation) is a term of convenience; not of limitation. It is employed to reflect the fact that public accommodations are commonly at fixed "places" e.g. hotels, restaurants, swimming pools, etc. But a public conveyance, like a train, is a "place" of public accommodation although it has a moving situs. 318 A.2d at 37.

A recent trial court decision issuing a preliminary injunction against

the respondent in the District of Columbia also held that the word "place" does not so limit the coverage of the definition. Bloomfield v. District of Columbia Junior Chamber of Commerce and United States Jaycees, Civil Act.

No. 491-79 (Super-r.Ct. D.C., filed Sept. 17, 1979). The D.C. Court preliminarily

enjoined the U.S. Jaycees from revoking the charter of the local Jaycee chapter or otherwise discriminating in their membership policy on the basis of sex.

The commentators also agree that state definitions of a "place of public accommodations" apply to situations where a service is the dominant exchange and the facility is either incidental or non-existent. See, Avins, What is a Place of "Public" Accommodation?, 52 Marquette L.Rev. 1, 59

(1968) and Discrimination in Access to Public Places: A Survey of State

and Federal Accommodations Laws, 7 N.Y.U. Review of Law and Social Change 215, 218 (Spring 1978). Respondent's interpretation might permit a lawn service, a taxi company, or a door-to-door salesman to discriminate. Such an interpretation would obviously not be an accurate reading of this statute and cannot be sustained.

The U.S. Jaycees have suggested that while the Jaycees may be subject to the public accommodations provisions as to their external functions, such as admission to the Patty Berg Golf Classic, the membership practices, which respondent believes should be equated with the ownership of a business corporation, are not subject to the statute. This distinction is without force since the crucial question is whether or not the organization is within the definition of a public accommodation and not private, not whether or not the group which receives the advantages of the organization might be called members or customers. A "private club" which featured nude dancing and sold a "membership" at the door would not thereby avoid our statute. Neither would the membership policies of a food cooperative or a health club.

The respondent seeks to shift the focus of this proceeding to the offering of chapter memberships by the national organization and claims that

this "offering" is more selective since applicants to become local chapters must show that they, are of good repute and organized for purposes consistent with those of the respondent. Although the offering of charter memberships may be somewhat more selective than the offering of individual memberships, shifting the focus in this manner ignores the reality of the integrated operation of national, state, and local organizations in regard to solicitation of members. It is clear that the solicitation of individual members at the local level is the lifeblood of the Jaycee organization. Realistically, it is respondent's attempt to control and restrict the local chapter's offering of memberships which is the substance of this case, not the nature of respondent's offering of charter memberships.

The Public Nature of the Jaycees

Many of the state statutes prohibiting discrimination in public accommodations provide a specific exemption for clubs or organizations which are "distinctly private", (See, e.g. Ore. Rev. Stat. Sec. 30.675(2)). Like-wise, the federal law excepts private clubs. (42 U.S.C. Sec. 2000a(e))

Our statute does not explicitly contain this exception, but it does provide that the goods, services, or advantages offered must be "made available to the public" before an organization is included within the definition.

The United States Jaycees, the Minnesota state organization, and the St. Paul and Minneapolis Chapters are not operated as private organizations and do offer their services and advantages to the public. The record indicates that membership in the Minneapolis and St. Paul Chapters is open to anyone who is between the ages of 18 and 35. There is no screening of prospective members and the local board of directors routinely approve all prospective members submitted. The local officers could recall no instance of a rejection of an application for membership. While the Jaycee program attracts young people involved in business, and particularly those in corporate management; membership is offered to those in all walks of life by means such as door-to-door solicitation for membership. The national and state organizations encourage a diverse membership. The restriction of membership by age group apparently did not make the Boy Scouts a private organization within the meaning of the Oregon statute. *Schenck v. Boy Scouts of America*, 551 P. 2d 465, 473 (Ore. 1976). In the *Schenck* case, a girl unsuccessfully sought to join the Cub Scouts and the court concluded that the Boy Scouts did not come "within the Oregon definition of "place of public accommodation". This interpretation, however, was based solely upon the existence of a legislative history which included a discussion of the applicability of the public accommodation provision. As has been discussed, no such history is available in Minnesota. See also, *U.S. v. Slidell Youth Football Ass'n*, 387 F.Supp. 474, 476 n. 1, 483 (E.D. La. 1974) (football program open to youth age 7 to 13 was place of public accommodation) and *Little League Baseball*, supra.

There can be no doubt that members of genuinely private clubs do have a substantial privacy interest with respect to their membership practices.

., they obviously would not fall within the definition of a "place of public accommodation. The attributes of a private club have been enumerated by the federal courts and include such items as selectiveness of admission, formal membership procedures, membership control over new members, and substantial dues, none of which would identify the respondent as a private club. See, *Cornelius v. Benevolent Protective Order of the Elks*, 383 - F.Supp. 1182 (D.C. Conn. 1974). The *Cornelius* court observed that, "MD have their privacy protected, clubs must function as extensions of members homes and not as extensions of their businesses." 382 F.Supp. at 1204.

kn examination of the nature of the Jaycee organization, and the two local chapters involved in this case, in particular, discloses that the organizations involved are more of a business than a social nature. lie Jaycees were organized as the U.S. Junior Chamber of Commcrce and originally had Cie sole purpose of promoting the business interests of its members. See, *N. Y. City Jaycees, Inc.- v. The U.S. Jaycees, Inc.*, 512 F.2d 856, 858

(2nd Cir. 1975). The women who testified in this proceeding (Findings of Fact No. 16 to 18) gave vivid examples of the way that regular membership and participation at the officer or director level in the Jaycees directly benefited their business career. The record shows that not only have these women benefited generally from the skills that they acquired in the Jaycees, lout participation has also led to promotion. One of the women was encouraged to join by her personnel department as a step in her advancement in her company.

To deny this training and help in advancement to women in business while it is fully available to men would place women at a significant competitive disadvantage. Although the respondent would permit women to join as "associate members", this means that they could not vote, could not hold an office such as vice president or director, and could not receive awards. The testimony documents the importance of holding office and receiving awards to both leadership training and career advancement. It would make little sense to guarantee women an equal opportunity in employment while denying them access to activities designed to help in career advancement. As Judge Heany noted in dissent in *Junior Chamber of Commerce of Kansas City v. The Missouri State Junior Chamber of Commerce and the U.S. Jaycee*, 508 F.2d 1031, 1035 (8th Cir. 1975), "The by-laws of the U.S. Jaycees MaKe it clear that they are not merely an organization designed to engage in good works. They are rather an organization primarily designed to train future leaders for civic and business responsibilities."

The legislature has made plain the seriousness with which it views such discrimination by declaring the public policy in this state to be that, "The opportunity to . . . full and equal utilization of public accommodations . . . without such discrimination as is prohibited by this chapter is hereby recognized and declared to be a civil right." Minn. Stat. Sec. 363.12, subd. 2 (1978), and by declaring that, "Such discrimination threatens

the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy." Minn. Stat. Sec. 363.12, subd. 1(5) (1978).

While the matter of placing women at a competitive disadvantage in the marketplace is a serious enough form of discrimination, there is perhaps an even more serious concern involved when a person is compelled to accept an inferior or second class status in an organization open to the public because of his or her sex. As the dissent in Schenck, supra, pointed out:

The evil at which this type of legislation is aimed is not simply the unfairness which results in denying certain materials to one group when they are at the same time made available to others; it is aimed at the elimination or practices which deprive a person of his individuality by insisting that he bear the stamp of his class. 551 P.2d at 471.

The United States Jaycees are prohibited by our Minnesota Human Rights

Act from insisting that women in this state accept a membership status in the Jaycees to that accorded to men.

The respondent has suggested that a ruling in this proceeding will affect other organizations such as the Kiwanis, Lions, or others which have similar by-laws. The short answer to this concern is that the order in this case necessarily applies only to the respondent. There is, of course, little evidence in the record concerning other organizations which might be

similar to the respondent. However, it is conceivable that respondent is unique in certain respects such as: (1) the large number of business people in its membership; (2) the extent of its leadership training program; (3) its lack of admission requirements; (4) its emphasis on recruitment of new members; (5) its ties to corporations through both sponsorship of members and corporate recognition of the value of Jaycee training; (6) minimal membership control over admissions; (7) its significant current female membership; and (8) its orientation toward civic and business activities as opposed to social activities. Such a determination cannot be made in this case.

G.A.B.