EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Tony Stubblefield 2313 Brentwood Parkway Madison, WI 53704 Complainant vs. Carol Ann Hewitt, Minor League Director East Madison Little League 100 North Sherman Avenue Madison, WI 53704 Little League Baseball Inc. Post Office Box 3485 Williamsport, PA 17701 Respondent	HEARING EXAMINER'S DECISION AND ORDER ON APPEAL FROM INITIAL DETERMINATION Case No. 3283

DECISION AND ORDER

On June 4, 1991, the Complainant, Anthony Stubblefield, filed a complaint with the Madison Equal Opportunities Commission alleging a violation of the Equal Opportunities Ordinance (MGO 3.23 et seq.). Stubblefield claims that he was deprived of his rights with respect to the provision of a place of public accommodation or amusement on the basis of his race. The Respondent, the East Madison Little League, denies that it discriminated against Stubblefield and further asserts that it is not a place of public accommodation or amusement as that term is defined at MGO 3.23(2)(e) and is therefore not subject to the jurisdiction of the Commission. The Respondent filed a Motion to Dismiss the complaint on this basis. The parties submitted written arguments and as a result of independent research, I conclude that the Respondent is a place of public accommodation or amusement within the meaning of the Ordinance and that this matter is remanded to the Investigator for further investigation of the claim of discrimination.

MEMORANDUM DECISION

The Respondent's position is that because it is an organizational body without a fixed location, it is not a "place" as that term is used in the Ordinance. In reaching this conclusion, the Respondent argues that it lacks any reasonable similarity to those establishments or activities specifically listed in the definition of a place of public accommodation or amusement. Under the theories of *noscitur a sociis* and *ejusdem generis* relied upon by the Respondent, such a similarity or connection is crucial to finding that the Respondent falls within the regulatory scheme of the Ordinance. This is because the Respondent asserts that the common thread of those items listed at MGO 3.23(2)(e) is a physical location or situs for activity. It is the Respondent's contention that it lacks this physical focus for its activities.

This issue has not been addressed by the Commission before but it has been addressed by other jurisdictions. In the case of Neldaughter v. Dickeyville Athletic Club, Dennis Casper and Sharon Kaiser, ERD Case No. 8900539, (LIRC 07/31/91), the Labor and Industry Review Commission found that a softball league could be a place of public accommodation or amusement. Key to the ruling was the finding that the "place" requirement was satisfied by the baseball diamonds upon which the League played its games. This was also the view of the Court in National Org. for W. Essex Ch. v. Little L. Base., Inc. 318 A.2d 33, 127 N. J. Super. 522 (1974). Important in both of these cases was not just the fact that the leagues provided a physical place of public accommodation or amusement, but also the leagues' willingness to accept all comers for a price or other general requirement. Though it is not clear from the record, it would appear that the Respondent accepts all applicants that wish to play, up to the limit of the league. This fact can more clearly be developed during investigation. It is this openness and generalized lack of selectivity that is the hallmark of a place of public accommodation or amusement. Jones v. Broadway Roller Rink Company, 136 Wis. 595 (1908). When coupled with the physical location of the baseball diamonds upon which the Respondent organizes its games, its lack of selectivity demonstrates that Respondent does provide a place of public accommodation or amusement as defined by the Ordinance.

The Respondent heavily relies upon the case of Hatheway v. Ganett Satellite Inf. 157 Wis. 2d 395, 459 N.W. 2d 873 (Wis. App. 1990). In this case brought under the Wisconsin public accommodation statute, the Court of Appeals found that newspaper classified advertising was not covered by the statute because such advertising was not sufficiently similar to those other specifically listed examples. In discussing the Hatheway case, LIRC in its decision in the Neldaughter case determined that there was sufficient similarity between an athletic league and those examples listed in the statute to find that the principles of *noscitur a sociis* and *ejusdem generis* did not mandate the same result as in the Hatheway case. Similarly the Ordinance is broad enough to cover the Respondent and its activities without resorting to a tortured analysis of intent and scope. The Respondent argues that the City Council narrowed the Ordinance in its amendments of 1990. Actually, the City expanded the scope of the Ordinance by deleting the incorporation by reference of the definitional provisions of the state law.

While I conclude that the Respondent and its activities are covered by the definition of a place of accommodation or amusement, I am less certain that the Complainant is so clearly a person who is intended to be covered under the circumstances of this case. The Respondent has not raised that issue as of yet and it is likely that further investigation will lead to facts that can answer this question. It is for the foregoing reasons that I find that the Commission has jurisdiction over the Respondent as a place of public accommodation or amusement. This matter is remanded to the Investigator for further investigation and issuance of an Initial Determination.

IT IS SO ORDERED,

Clifford E. Blackwell, III
Hearing Examiner

Signed and dated this 2nd day of April, 1992.