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

Audrey Jones 245 S Park St Madison WI 53715 Complainant vs. Safe Rider Program PO Box 8858 Madison WI 53708-8858 Respondent	HEARING EXAMINER'S DECISION AND ORDER ON JURISDICTION Case No. 19983045

BACKGROUND

On February 19, 1998, the Complainant, Audrey Jones, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint alleged that the Respondent, the Safe Rider Program and the Madison/Dane County Tavern League discriminated against her on the basis of her handicap/disability (spinal bifida and cerebral palsy) when one of its members denied her a ride under the Safe Rider Program. The Respondent denies discriminating against the Complainant on any basis and asserts that the Commission is without jurisdiction over the Respondent.

The complaint was transferred to the Hearing Examiner for determination of the jurisdictional issues. The Hearing Examiner gave the parties the opportunity to submit additional argument and briefs. Based upon this additional argument, the Hearing Examiner concludes that the Commission has jurisdiction over the allegations of this complaint.

DECISION

The Respondent presents several arguments in support of its contention that the Commission is without jurisdiction over this complaint. The Complainant presented no response. This circumstance requires the Hearing Examiner to look at the jurisdictional issues independently. The Hearing Examiner stresses that he makes no findings or determinations relating to the merits of this complaint.

The first claim of the Respondent is that the Complainant simply does not fall within the ambit of the Safe Rider program. The Safe Rider program is intended to keep persons driving motor vehicles who become impaired while at a tavern or other participating establishment from getting back in their vehicles and possibly injuring him or herself or another. The Complainant allegedly did not drive to the establishment at which she was allegedly denied a ride in the Safe Rider program.

This claim does not rise to the level of a jurisdictional defense. Whether the Complainant meets the general criteria for a free ride under the program is a factual question that must be initially addressed by the Investigator/Conciliator.

The second claim of the Respondent is that the Safe Rider program is a service funded by the Madison/Dane County Tavern League, but that the Tavern League does not implement the program or administer it at the customer level. The Tavern League is a membership organization whose membership is composed of taverns and similar establishments. While the Safe Rider program is funded by the Tavern League, it is "operated" by the individual, participating members.

While the Tavern League, as a membership organization, may itself not be a public place of accommodation or amusement, the Safe Rider program which is undeniably a service of the Tavern League is a public place of

accommodation or amusement as that term is used in the ordinance. The Tavern League as a membership organization is not open to any member of the public, but is limited to specific membership criteria. To the extent that the Respondent is highly selective with respect to its membership, it would not be a public place of accommodation or amusement. Rape Crisis Center, Inc. v. City of Madison, Wisconsin, Equal Opportunities Commission of the City of Madison and Robert Schultz, Dane County Circuit Court, Case No. 92 CV 648 (8/19/92), Schultz v. Rape Crisis Center -Chimera Self Defense, MEOC Case No. 3200 (Comm'n. Dec. 01/09/92, Ex. Dec. 8/1/91), United States v. Trustees of the Fraternal Order of Eagles, 472 F. Supp. 1174 (E.D. Wis. 1979), Schenk v. Women's Transit Authority, MEOC Case No. 3377 (Ex. Dec. 3/17/99). However, its service, the Safe Rider program, is open to the participation of the public without significant qualification. The situation would seem to be similar to the often hypothesized exclusive membership organization that opens its facilities on Friday evenings to the public for a fish fry. The organization retains its identity and is not a public place of accommodation or amusement.

However, its service, even if it is intended to further the goals of the organization, is a public place of accommodation or amusement. The Wisconsin statute prohibiting discrimination in public places of accommodation or amusement specifically recognizes this distinction. Wis. Stats. Sec. 106.04(1m)(p)2. The ordinance is more broadly written than the state statute and is broad enough to encompass the coverage specifically stated by the state statute.

Despite the fact that the Safe Rider program is actually carried out by the Respondent's member establishments, there can be no reasonable doubt that the program is a service of the Respondent. The literature relating to the Safe Rider program provided by the Respondent clearly describes the program as a service of the Respondent. The member establishments act as agents for the Respondent in implementation of the Safe Rider program. The fact that the Respondent itself did not make the decision not to permit the Complainant to take advantage of the program does not keep it from being bound by the actions of its agents. Booker v. Threlfall, MEOC Case No. 1670 (Ex. Dec. 11/19/97).

The Respondent also appears to contend that it is not a public place of accommodation or amusement because it is not a physical place. The ordinance's definition clearly contemplates that a "service" of a covered person can be subject to regulation. Case law has long settled this question. Baseball and youth football leagues have been held to be public places of accommodation despite their not having a separate physical place or location. Stubblefield v. Hewitt and Little League Baseball, Inc., MEOC Case No. 3283 (Ex. Dec. 4/2/92), Neldaughter v. Dickeyville Athletic Club, Dennis Casper and Sharon Kaiser, ERD Case No. 8900539 (LIRC 7/31/91), National Org. for Women, Essex Chap. v. Little League Baseball, Inc. 318 A. 2d 33, 127 N.J. Super. 522 (1974).

The Respondent's Safe Rider program is held open to all qualifying members of the public. The Respondent or its agents exercise discretion in administering the program. Given the open nature of the program, the Hearing Examiner has no choice but to find that the Commission has jurisdiction over the allegations of the complaint. To find that the Respondent's Safe Rider program is not a public place of accommodation would permit the Respondent or its agent members to deny service under the program on any number of otherwise protected bases such as race, sex or national origin/ancestry. Such a result could not have been contemplated by the Common Council when it adopted the protections of Section 3.23(5). Whether the complaint can survive on the merits of the allegations seems problematical to the Hearing Examiner, but that is a matter for the Investigator/Conciliator to determine, at least initially.

ORDER

The complaint is remanded to the Investigator/Conciliator for completion of the investigation and issuance of an Initial Determination.

Signed and dated this 6th day of April, 1999.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner