

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

Jennifer Hafner)
14302 SE 18th St Apt A4)
Bellevue, WA 98007)
)
Complainant)
)
vs.)
)
Event Specialists)
W296N7113 Tamron Ct)
Hartland, WI 53029)
)
Last Coast Producing Corp)
4704 Signature Dr)
Middleton, WI 53562)
)
Titan - CSC)
1707 Main St Ste 123)
LaCrosse, WI 54601)
)
Respondent)
)

**HEARING EXAMINER'S
DECISION AND ORDER ON
RESPONDENTS' MOTION TO DISMISS**

Case No. 20003184

BACKGROUND

On October 30, 2000, the Complainant, Jennifer Hafner, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint alleges that the Respondents, Last Coast Producing Corporation, Titan - CSC, and Event Specialists, discriminated against the Complainant on the basis of disability when they did not permit her to bring her dog into the Madison Blues Festival (Festival), a public accommodation. The Festival takes place in Olin Park, a City of Madison public park. The Complainant's disability is a combination of anxiety-related disorders that her dog, Majic, helps to relieve.

The Respondents dispute the Commission's jurisdiction over the subject matter of the complaint. The Complainant argues that the Commission has the authority and ability to adjudicate the complaint.

The parties were given the opportunity to submit written arguments in support of their respective positions. Respondent Last Coast Producing Corp. and Event Specialists each filed their own argument with Titan - CSC joining in with Last Coast Producing's arguments. Based upon the materials provided to the Hearing Examiner, the Hearing Examiner concludes that the Commission has jurisdiction to hear the complaint.

DECISION

The Commission's grant of authority comes with limits on its jurisdictional power. As a creature of the legislature, the City of Madison may only act within the limits established by the legislature. The Commission may only enforce the Equal Opportunities Ordinance (the Ordinance) in a way that does not violate the spirit of laws of superior jurisdictions. The Respondents assert that the Commission's grant of authority is in conflict with other legislative enactments.

The parties advance numerous arguments as to which laws apply to the present case and whether the Commission may deliver judgment without overstepping its authority. For purposes of this decision, the Hearing Examiner will treat arguments raised by separate Respondents as being raised by all of them. The Hearing Examiner will examine each of the potential jurisdictional conflicts.

Madison General Ordinance § 8.19 provides that dog owners may not bring their dogs onto certain City parks, including Olin Park. This ordinance provides an exception for specially trained dogs brought by visually-impaired, hearing-impaired or mobility impaired persons who require the dog's services. The Respondents argue that their denial of the Complainant's use of the public accommodation occurred because the dog did not comply with the service dog exception of § 8.19.

Section 8.19 is more narrowly focused than the Ordinance and sets forth an exception to liability for bringing dogs into specified City parks. The language of § 8.19 appears to have been taken from or follows closely that of Wis. Stat. § 174.056. On the other hand, the protections afforded individuals with disabilities set forth in the Ordinance cover many more than the three disabling conditions set forth in § 8.19. Instead of providing an exception to liability, the requirements of the Ordinance establish requirements for operators of public places of accommodation and specifically require public places of accommodation to accommodate the needs of individuals with disabilities. Generally speaking, the service dog provisions of § 8.19 exempt from liability certain individuals in a specific circumstance, while the provisions of the Ordinance state much a broader scope of protection for all individuals with disabilities.

Unlike public accommodation laws that place the onus of compliance on accommodation operators, § 8.19 charges dog owners or keepers with compliance with the law. The Respondents, in their motion for dismissal, have offered no facts or allegations that demonstrates that they had the power to enforce § 8.19 against the Complainant. Any violation of § 8.19 must be enforced by the City of Madison, not by other park users or in this case, public accommodation operators such as the Respondents. If the City had given the Respondents the authority to enforce City laws for the duration of the Festival, the Respondents could argue that their denial of entry due to § 8.19 was a valid exercise of police power. This would indeed be an extraordinary circumstance. There is no evidence of such a grant of authority before the Hearing Examiner in this motion. The Respondents fail to demonstrate what adverse consequence would have flowed to them had the Complainant been permitted to enter the Festival in violation of § 8.19. As such, any argument regarding the preemption of the Ordinance by § 8.19 must fail primarily due to a lack of standing on the part of the Respondents.

A similar conflict is presented when reconciling the Ordinance with Wisconsin law. Wis. Stats. Section 174.056 provides that no operator of a place of public accommodation may deny entrance to a dog providing service to a blind, deaf, or mobility impaired person if the dog has a leash

and special cape and the owner has presented credentials issued by a training school for service dogs. The Respondents contend that the Commission is without jurisdiction because there exists a conflict between the Ordinance and the letter or spirit of the state law.

This conflict allegedly arises because of the narrower scope and significant limitations set forth in Wis. Stats. 174.056, i.e., that section only specifies conditions for access to public places of accommodation for blind, deaf and mobility-impaired individuals using guide or service dogs. The Ordinance, on the other hand, contains no such limitation and establishes no fixed criteria for verifying the suitability of service dogs or animals. The Respondents contend that § 174.056 expresses the legislature's intent to limit the use of service dogs/animals to these three disabilities in the context of public places of accommodation.

The reading of § 174.056 urged by the Respondents in terms of the Ordinance would not only override the Ordinance, but would eviscerate the protections given to the disabled in access to public places of accommodation by § 106.52 in a way that the legislature could not have possibly intended. Given the stand-alone nature of § 174.056, the statute cannot be the final word on access to a public place of accommodation by the disabled. The right to access a public place of accommodation is actually established in § 106.52. A dog-regulation statute such as § 174.056 is unlikely to have been intended to be the exclusive regulation of access to public places of accommodation, given the breadth of coverage set forth in § 106.52.

Section 174.056 sets forth set criteria for readily ascertainable disabilities with specific standards for conduct. However, that does not, in a world with numerous and varied disabilities, serve as an appropriate standard to judge what disabilities merit accommodation and which do not. In examining the Ordinance with an eye toward state law, it is apparent that it could not possibly have been the intent of the legislature to only permit three, specific disabilities to have the services of only one species of service animal when patronizing a public accommodation. This is especially true when examined in light of the broad definitions of disability the state legislature employs in Section 106.52, which is echoed in the Ordinance.

Section 106.52 (3)(a)(1) provides that no operator of a place of public accommodation may deny enjoyment of the accommodation because of disability. For § 106.52, "disability" means a physical or mental impairment that substantially limits a major life activity.

A finding that § 174.056 is not the final word in access of the disabled to public places of accommodation leaves open the question of what judicial process and burden structure is most appropriate when dealing with all other circumstances not involving blind, deaf or mobility-impaired patrons with service dogs.

The most appropriate process by which to decide cases such as the instant case comes from case law sprung from the Ordinance, the ADA, and the WFEA. The Hearing Examiner proposes to use an analytical framework similar to that used for determining the appropriate accommodation for disabled employees, similar to that stated in Beck v. University of Wisconsin Board of Regents, 75 F.3d 1130 (7th Cir. 1996). Although the circumstances in Beck involved an employment setting, the interactive process is a viable option, with slight modification, in a situation involving potential discrimination against the disabled in cases involving access to a public place of accommodation.

The Complainant must demonstrate that the Respondents knew of the Complainant's disability or regarded the Complainant as having a disability. Rhone v. Marquip, MEOC Case No. 20967 (Ex. Dec. 7/31/89); Steinbach v. Meriter Health Services, MEOC Case No. 22125(Ex. Dec. 11/11/97); Rosin v. Rite-Way Leasing Co., MEOC Case No. 19982206 (Ex. Dec. 10/3/01). The Complainant must next establish the need of an accommodation along with a proposal of what that accommodation requires.

When the Respondent is made aware of the need for accommodation, the parties optimally should engage in an interactive process over what accommodation the situation reasonably requires and permits. If the Respondent denies access because of a service dog, the Complainant must show that the Respondents did not offer to accommodate her disability, the Respondents did not engage in an interactive process, or that the Respondents engaged in an interactive process but did not offer a reasonable accommodation.

In writing, this process appears cumbersome and time consuming but the Hearing Examiner expects that in reality, discussions of this matter should only take minutes. In the present case, it is clear that many of the issues raised by this proposed analytical framework are currently in dispute and can only be resolved at the time of hearing.

It is possible that § 8.19 or § 174.056 are contrary to the language or spirit of the Americans with Disabilities Act (ADA), as alleged by the Complainant. 42 U.S.C. §§ 12102-12213. But an action before the Commission is not the proper forum to decide that issue. Rather, the United States District Court would be the forum for such an action. The Hearing Examiner may not decide if a conflict exists or resolve any alleged conflict between § 8.19 or § 174.056 and the ADA.

ORDER

The Respondents' motion is hereby dismissed. Further proceedings in this matter will be scheduled.

Signed and dated this 14th day of January, 2002.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

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