

OPINION
65-52

June 14, 1965 (OPINION)

Mr. John A. Alphson

State's Attorney

Grand Forks County

RE: Civil Rights - Public Facilities - Application of Statute

This is in reply to your letter in which you advise that you have had some discussion with the Judge Advocate of the Grand Forks Air Base with reference to construction and interpretation of section 12-22-30 of the North Dakota Century Code, as amended. You further advise that there is a question in your mind as to whether or not the portion stating "other places" would be applicable to apartment dwellings. You specifically ask for an opinion on the following questions:

1. Does Section 12-22-30 extend 'accommodations' to places such as multiple dwellings, complexes?
2. Would the above cited section under the 'accommodations' extend itself to an instance where there would be single apartment in addition to the premises occupied by the owner?"

The section in question provides as follows:

12-22-30. EQUAL RIGHTS IN PUBLIC PLACES - PENALTY. No person shall be excluded on account of race, color, religion, or national origin 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 refreshment, entertainment, or accommodation. Any person violating any of the provisions of this section or aiding or inciting another person to do the same shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment." (Emphasis supplied.)

The language singularly underscored in the above quoted section clearly illustrates that it refers to "public places and conveyances." The language in the doubly underscored portion pertains specifically to such establishments which are generally considered to be "public places." The language "or other places of refreshment, entertainment, or accommodation" follows words of specific description and meaning, such as hotels, barber shops, etc. The specific words describe institutions or establishments which are by use and operation considered public. The term "public" as used in this statute does not refer to ownership but rather to the use of

such buildings or establishments. The term "or other places of * * * accommodation" would appear to take its meaning from the preceding language.

The rule of EJUSDEN GENERIS would seem to apply here. The rule in substance provides that, where general words follow the enumeration of particular classes of persons or things, the general words would be construed as applicable only to persons or things of the same general nature or class as those enumerated (82 C.J.S. section 332, Page 652). The same authority gives the reason for the rule that if the Legislature had intended to use the words in an unrestricted sense, they would have made no mention of the particular classes. The same rule, as further explained, means that the general words do not explain or amplify particular terms preceding them, but are themselves restricted and explained by the particular terms. The same authority also states that the application of the rule of EJUSDEN GENERIS is especially applicable to penal or criminal statutes and statutes which partake of the nature of criminal processes.

This rule has been adopted in North Dakota by both the Federal Courts and the State Supreme Court. (First National Bank of Anamoose v. U.S., 206 Fed. 374 and the North Dakota Supreme Court in State vs. McGillic, 141 N.W. 82; State vs. Frazier, 167 N.W. 510.) The rule has received more prominent consideration in Gaustad v. Nygaard, 256 N.W. 230. As recently as 1959 the North Dakota Supreme Court applied this rule to zoning laws and regulations in Savelkoul vs. Board of County Commissioners, Ward County, 96 N.W.2d. 394.

It would thus appear that the rule would be applicable to the provisions found in section 12-22-30 of the North Dakota Century Code. The term "other places of accommodation" would refer to such places that have a comparable status as hotels, barber shops, saloons and restaurants, which are the specifically enumerated places or establishments in the statute. By applying this rule, it would result in ascribing a meaning to the term "other places of accommodation" as that of accommodations available to the general public. Because the statute in question is a criminal statute and imposes a penalty, we believe the rule of EJUSDEN GENERIS has application.

It is therefore our opinion that the term "accommodations" refers to such accommodations which are available to the general public in the same sense as hotels, barber shops, saloons and restaurants are available to the general public. After having reached this conclusion we will attempt to discuss the specific questions you submitted.

Without any further information as to the specific use of the multiple dwellings or the single apartment, in addition to premises occupied by the owner, it is legally difficult to determine whether or not the specific property is property which would come within the provisions of section 12-22-30 of the North Dakota Century Code. The use, particularly the availability to the general public, is a factor which is entitled to great weight in determining whether or not said buildings come within the provisions of the section in question. Multiple dwellings or complexes in themselves do not come within the

provisions of the section; rather the use to which they are put and the general purpose would determine the status of such building.

In this respect it is significant to note that the Supreme Court in Wisconsin in Gregory v. Madison Mobile Homes Park, Inc., had under consideration a similar question under a somewhat similar statute in 128 N.W.2d. 462. In the Wisconsin case, the statute used the term "a public place of accommodation." The same law defines said term to mean and include "in restaurants, taverns, barber shops and public conveyances." The person operating a trailer park was proceeded against for having violated the law. He demurred to the complaint. The Supreme Court of Wisconsin overruled the demurrer by saying that "the subject matter * * * is far too vital to be summarily disposed of by demurrer upon the inadequate information contained in the record on demurrer." Before making this statement, the Court stated that the record on the demurrer is "completely barren as to any evidence of the nature, character, and incidents of operation of a trailer park."

We might say that the same situation is present as to the specific questions you asked. We do not have adequate information on which to make a legal conclusion; however, we might suggest that if the multiple dwellings or complexes or premises with an addition of a single apartment come within the definitions contained in section 23-09-01 of the North Dakota Century Code, as amended by Chapter 208 of the 1963 Session Laws, the same would come within the provisions of section 12-22-30 of the North Dakota Century Code. The opposite, however, would not necessarily follow.

HELGI JOHANNESON

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