

Legal Opinion: GME-0008

Index: 9.405, 9.211, 9.205

Subject: Effect of Fair Housing Act on Certain Advertising

February 20, 1992

Honorable Andy Ireland
House of Representatives
Washington, DC 20515

Dear Mr. Ireland:

Thank you for your letter of January 8, 1992, regarding the concerns of your constituent, Mr. Don McLaughlin, about the effect of the Federal Fair Housing Act (the Act) on certain advertising. Mr. McLaughlin raised two issues. First, he has inquired whether the Act applies to advertisements for the sale of mobile home parks. Second, if it does, under what circumstances can newspapers run advertisements for mobile home park sales which contain the word "retiree" without violating the Act's prohibitions against discrimination because of familial status?

The Department of Housing and Urban Development (HUD) believes that the Act's definition of "dwelling" is broad enough to include mobile home parks. Section 802(b) of the Act states that:

"Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

The Department has stated that the statutory definition of dwelling "is clearly broad enough to cover ... mobile home parks." 24 C.F.R. Subtitle B, Ch. I, Subch. A, App. I at 694. If a mobile home park is intended for use as a residence for one or more persons, it would be a dwelling which is covered by the Act.

Section 804(c) of the Act states that it is unlawful:

To make, print, or publish, or cause to be made, printed or published, any ... advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

Accordingly, it is unlawful to publish an advertisement with respect to the sale of a mobile home park which indicates

discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

Guidance about the Department's approach to complaints alleging discriminatory advertising is provided in the Federal Regulations, a copy of which is enclosed. When a complaint is filed, the Department investigates to determine whether the particular words or phrases challenged by the complainant indicate discrimination, in the context they were used by the respondent. Examples given in the regulations of words which often are used to convey familial status discrimination include "adults, children, singles, and mature persons." 24 C.F.R.

109.20. As explained in the regulations, the words used in each advertisement are examined in context; accordingly, the Department expresses no opinion as to whether the use of the word "retiree" in an advertisement would violate the Act.

The Act creates an exemption to the prohibitions against familial status discrimination, including the prohibitions against advertisements which discriminate against families with children, for "housing for older persons." See Section 807(b)(1) of the Act. "Housing for older persons" is defined as housing:

(A) provided under any State or Federal program that the Secretary of HUD determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

See Section 807(b)(2). Therefore, if a mobile home park

satisfies one of these three definitions, an advertisement which indicates that the park is housing for older persons would not violate the Act.

Your constituent explains that newspapers are unwilling to accept advertisements which use the word "retiree" unless the Department has issued an "exemption certificate" stating that the advertised property qualifies as housing for older persons. Because complaints filed under the Act will be decided by Federal Administrative Law Judges and State and Federal trial court judges, HUD cannot prescribe a course of conduct which is guaranteed to keep newspapers free from liability. However, the Department does not expect newspapers to require exemption certificates nor to conduct independent investigations of their customers to ensure that they satisfy the Act's criteria for housing for older persons. If a newspaper accepted an advertisement which used the word "retiree" and a family with children filed a complaint with HUD claiming discrimination on the basis of familial status, the newspaper's good faith efforts to comply with the Act would be considered in connection with the Department's investigation of the complaint. Specifically, if the newspaper reasonably relied on a customer's claim that the housing qualified as "housing for older persons" and the newspaper possessed no contrary information, these facts would be considered in determining the newspaper's good faith efforts to comply with the Act during the investigation of a complaint claiming discrimination on the basis of familial status.

I hope this information is useful to your constituent.
Thank you for your continued interest in fair housing.

Very sincerely yours,

Russell K. Paul
Assistant Secretary

Enclosure