

KARSON'S INN, INC. vs MAYOR
#6667-CITY COUNCIL OF BALTO. et al

T-2261
HF-5-12-48

Montgomery County, Maryland

County Office Building
Rockville, Maryland

TELEPHONE POPLAR 2-2121

OFFICE OF COUNTY ATTORNEY

*File
1/17/63 County Anti-Discrim*

6667

January 28, 1963

Robert C. Murphy, Esq.
Deputy Attorney General
1201 Mathieson Building
Baltimore 2, Maryland

Dear Mr. Murphy:

Enclosed are copies of our opinion of July 12, 1960 and the "47 Lawyers" opinion in response later on in 1960. See also Marshall v. Kansas City, _____ Mo. _____, 355 S.W. 2d 877 (April 1962), upholding by 4-3 Kansas City's public accommodations ordinance. I know of two cases pending at trial level, Karson's Inn, Inc. v. M&CC Baltimore, Baltimore City Superior Court, and a case in Wilmington, Delaware, the name of which was not included in a letter I received from Wilmington.

If I can be of more help, please call.

Very truly yours,

ALFRED H. CARTER
County Attorney



Richard J. Sincoff
Assistant County Attorney

AHC:RJS:md
Encls.

IMPORTANT NOTICE

Appellee's Brief due to be filed

September 10, 1963

If no brief is to be filed on or before this date, counsel will please notify this office.

Counsel should also follow the assignment of this Court as published in The Daily Record or contact the Clerk's Office to ascertain when this case will be assigned for argument **AS THERE WILL BE NO OTHER NOTIFICATION UNLESS SPECIALLY REQUESTED.**

FILED AUG 24 1963

IN THE
Court of Appeals of Maryland

SEPTEMBER TERM, 1963

No. 29

MAYOR AND CITY COUNCIL OF BALTIMORE,
Appellant,

v.

KARSON'S INN, INC.,
Appellee.

APPEAL FROM THE SUPERIOR COURT OF BALTIMORE CITY
(EDWIN HARLAN, Judge)

SUPPLEMENTAL APPENDIX OF APPELLANT

Joseph Allen

City Solicitor,

GEORGE W. BAKER, JR.,
Deputy City Solicitor,MARTIN B. GREENFELD,
Assistant City Solicitor,
For Appellant.

**SUPPLEMENTAL APPENDIX TO APPELLANT'S
BRIEF NO. 29**

ORDINANCE

No. 1249

An ordinance to repeal and re-ordain, with amendments, Sections 8, 9, 11 and 12 of Article 14A of the Baltimore City Code (1950 Edition), title "Human Relations", sub-title "Baltimore Equal Employment Opportunity Commission", as said sub-title was ordained by Ordinance No. 379, approved April 18, 1956, and amended by Ordinance No. 409, approved July 6, 1960, and to add a new Section 10A thereto, to follow immediately after Section 10 thereof, amending the Equal Employment Opportunity Ordinance in order to prohibit in Baltimore City discrimination on the basis of race, creed, color or national origin in certain places of public accommodation which provide sleeping accommodations or serve meals for a consideration, placing the administration and enforcement of this prohibition within the Baltimore Equal Employment Opportunity Commission, changing the name of said Commission to be Baltimore Equal Opportunity Commission, and providing for the continuation of the old Commission in the new Commission, changing the name of said sub-title to be "Baltimore Equal Opportunity Commission" and relating generally to the prohibition of discrimination in certain places of public accommodation in Baltimore City on the basis of race, creed, color or national origin.

SECTION 1. *Be it ordained by the Mayor and City Council of Baltimore,* That Sections 8, 9, 11 and 12 of Article 14A of the Baltimore City Code (1950 Edition), title "Human Relations", sub-title "Baltimore Equal Employment Opportunity Commission", as said sub-title was ordained by Ordinance No. 379, approved April 18, 1956, and amended by Ordinance No. 409, approved July 6, 1960, be and

SUPP. APP. 2

they are hereby repealed and re-ordained, with amendments; that a new Section 10A be and it is hereby added thereto, to follow immediately after Section 10 thereof; that the name of the sub-title be and it is hereby changed to "Baltimore Equal Opportunity Commission", and all to read as follows:

8. The Mayor and City Council of Baltimore finds that the population of this city is composed of peoples of many diverse racial, religious and other ethnic groups. The practice of discrimination in employment against members of these groups and the consequent failure to utilize the productive capacities of individuals to their fullest extent deprives large segments of the population of this city of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies racial, religious and ethnic intolerance thereby resulting in grave injury to the public health and welfare. The practice by divers places of public accommodation of refusing to accommodate and serve members of these groups also tends to exacerbate intergroup relations thereby impairing the public welfare. It is hereby declared to be the public policy of this City to foster the employment of all persons in accordance with their fullest capacities, and to accommodate and serve persons in divers places of public accommodation, regardless of the race, color, religion, ancestry or national origin of such persons.

9. The term "person", as used in this ordinance, shall include an individual, partnership, corporation, union or association, including those acting in a fiduciary or representative capacity, whether appointed by a court or otherwise. Whenever used in any clause prescribing and imposing a penalty, the term "person", as applied to partnerships, unions or associations, shall mean the partners or members thereof and as applied to corporations, the officers thereof. The singular shall include the plural and the masculine shall include the feminine and neuter.

The term "employer", as used in this ordinance shall include every person, as hereinabove defined, who employs fifteen or more employees, exclusive of parents, spouse

SUPP. APP. 3

or children of such person. The term, however, shall not include fraternal, sectarian, charitable, religious or private educational organizations but shall include any governmental unit, agency or employee as to which the City has the power to legislate.

The term "labor organization" shall include any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

The term "employment agency" shall include every person, as hereinabove defined, regularly undertaking in this City, with or without compensation, to procure opportunities to work or to procure, recruit, refer, or place employees.

The term "employment" shall not include the employment of individuals as domestic servants nor the employment of individuals to serve in personal and confidential positions.

The term "place of public accommodation" includes a hotel, motel, inn or restaurant, meaning establishments commonly known or recognized as regularly engaged in the business of providing sleeping accommodations, or serving meals, or both for a consideration, and which are open to the general public. The term "place of public accommodation" does not apply to those establishments commonly known and recognized as boarding houses or rooming houses, to lunch counters or refreshment stands maintained in places of recreation or amusement such as bowling alleys, billiard halls, or swimming pools. Also the term "place of public accommodation" does not apply to those establishments dealing in alcoholic beverages where the average daily receipts of the sale of alcoholic beverages exceeds the average daily receipts of the sale of food nor to that part or parts of such restaurant establishments which part or parts are primarily devoted to the sale of alcoholic beverages.

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The term "commission" means the Baltimore Equal Opportunity Commission created herein.

10A. An owner or operator of a place of public accommodation or an agent or employee of said owner or operator shall not, because of the race, color, creed or national origin of any person, refuse, withhold from, or deny to such person any of the accommodations, advantages, facilities and privileges of such place of public accommodation.

11. (a) There is hereby established the Baltimore Equal Opportunity Commission which shall consist of nine members who shall be appointed by the Mayor subject to approval by the City Council. Any five members of the Commission shall constitute a quorum. They shall serve without compensation but shall be reimbursed for all expenses necessarily incurred. Each member of the Commission shall serve for a period of three years and until his successor is duly appointed and qualified, except that in the case of those first appointed the terms shall be staggered as follows: three to serve for one year; three to serve for two years; and three to serve for three years. The members of the Commission shall annually elect a chairman from among the members of the Commission and shall appoint a secretary.

(b) The Commission shall appoint such personnel at such compensation as may from time to time be authorized by the Mayor and City Council.

12. The Commission is authorized to and shall:

(a) Formulate and carry out a comprehensive educational program designed to eliminate and prevent prejudice and discrimination based upon race, color, religion, national origin or ancestry.

(b) Receive and investigate and seek to adjust all complaints of unfair employment practices or unfair accommodation practices forbidden by this ordinance, but no complaint shall be received unless made to the commission within thirty days of such alleged unfair practice. Unfair employment practices and unfair accommodation practices,

or either, are referred to elsewhere in this sub-title as "un-fair practices."

(c) Make and publish, after a public hearing, appropriate findings as a result of its investigations.

(d) From time to time but not less than once a year, render to the Mayor and City Council a written report of its activities and recommendations.

(e) Adopt such rules and regulations as may be necessary to carry out the functions of the commission and to effectuate the purposes and provisions of this sub-title.

(f) Consult with such advisory agencies and conciliation councils as will aid in effectuating the purposes of this sub-title.

(g) Have power to administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records and documents relevant or necessary for its investigations and proceedings, the same to be served by the Sheriff of Baltimore City or any of his deputies. In case of disobedience to a subpoena, the Commission may apply to the Court of appropriate jurisdiction of Baltimore City for an order requiring the attendance and testimony of witnesses and the production of books, papers, records and documents. The Court of appropriate jurisdiction of Baltimore City may, in case of contumacy or refusal to obey a subpoena for the attendance and testimony of a witness, or the production of books, papers, records and documents, after notice to the person subpoenaed as a witness or directed to produce books, papers, records and documents and, upon finding that the attendance and testimony of such witness, or the production of such books, papers, records and documents, as the case may be, is relevant or necessary for the investigations and proceedings of the Commission, issue an order requiring the attendance and testimony of such witness and the production of such books, papers, records and documents, and any failure to obey such order of the Court of appropriate jurisdiction of Baltimore City may be punished by such Court as a contempt thereof.

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SEC. 2. *And be it further ordained*, That the Baltimore Equal Opportunity Commission herein provided for is a continuation of the Baltimore Equal Employment Opportunity Commission now functioning pursuant to Ordinance 379, approved April 18, 1956, as amended by Ordinance 409, approved July 6, 1960. Nothing in this ordinance shall be construed to affect or interrupt the continuity of the former Baltimore Equal Employment Opportunity Commission or the membership thereof or the appropriations thereto. It is the intent of this ordinance with respect to the former Baltimore Equal Employment Opportunity Commission simply to change the name and to enlarge the duties thereof.

SEC. 3 *And be it further ordained*, That this ordinance shall take effect from the date of its passage.

Approved June 8 1962.

(signed) J. HAROLD GRADY,

Mayor of Baltimore City.

(signed) PHILIP H. GOODMAN,

President of the City Council
of Baltimore.

Presented to His Honor, the Mayor, this 5th day of June 1962.

By order, EDWARD L. HEALY, JR.,

Chief Clerk.

A True Copy

C. MEREDITH BOYCE,

Treasurer.

6469



STATE OF MARYLAND
COMPTROLLER OF THE TREASURY
301 WEST PRESTON STREET
BALTIMORE 1, MARYLAND

RETAIL SALES TAX DIVISION
EDWARD F. ENGELBERT
CHIEF
HENRY A. HEINMULLER, JR.
ASSISTANT CHIEF
TELEPHONE VERNON 7-9000
(837-9000)

April 12, 1962

William J. McCarthy,
Assistant Attorney General
1201 Mathieson Building
10 Light Street
Baltimore 1, Maryland

RE: FORMAL HEARINGS:
Karson's Inn

Dear Mr. McCarthy:

Mumford Sheet Metal Works

I tried to contact you on the telephone today, but your secretary told me you would not be back in the office until the 16th of April.

This office has set for a formal hearing in the case of the Karson's Inn for 10:00 a.m., Thursday, April 19, 1962. Looking forward to seeing you at that time.

I have also set for a formal hearing in the case of Mumford Sheet Metal Works for 10:00 a.m., Thursday, April 26, 1962.

Yours very truly,

A handwritten signature in cursive script that reads "John M. Murphy".
John M. Murphy

JMM:dk

KARSON'S INN, INC.,	:	IN THE
Petitioner,	:	SUPERIOR COURT
v.	:	OF
MAYOR AND CITY COUNCIL OF	:	BALTIMORE CITY
BALTIMORE,	:	
Respondent	:	
	:	
SERVE ON: Francis B. Burch,	:	Docket 1962
City Solicitor, Court House,	:	
Baltimore 2, Maryland	:	
	:	
and	:	Folio 990
	:	
THOMAS B. FINAN	:	File 745 7/8
Attorney General of Maryland	:	
Maryland National Bank Building	:	
Baltimore 2, Maryland	:	
	:	

ANSWER OF THOMAS B. FINAN
ATTORNEY GENERAL OF MARYLAND
TO PETITION FOR DECLARATORY JUDGMENT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Thomas B. Finan, Attorney General of Maryland, has been served with a copy of the Petition for Declaratory Judgment in the above entitled case, and declines to be served with any further pleadings in this matter since it does not involve any State statute, and further that the Respondent will be fully and adequately represented by the City Solicitor of Baltimore City.

Joseph S. Kaufman
Deputy Attorney General
Attorney for Thomas B. Finan

I HEREBY CERTIFY that on this 15th day of June, 1962, a copy of the within Answer was mailed to Messrs. Weinberg and Green, Attorneys for Petitioner, 10 Light Street, Baltimore 2, Maryland; and to Hon. Francis B. Burch, City Solicitor of Baltimore City, Court House, Baltimore 2, Maryland.

Joseph S. Kaufman
Deputy Attorney General

Return Day No. 180

1962

745 78

Bocket 990

KARSON'S INN, INC.,
Petitioner,

vs.

MAYOR AND CITY COUNCIL OF
BALTIMORE,
Respondent

SERVE ON: FRANCIS B. BURCH,
City Solicitor, Court House,
Baltimore 2, Maryland

and

THOMAS B. FINAN
Attorney General of Maryland
Maryland National Bank Building
Baltimore 2, Maryland

IN THE
SUPERIOR COURT
OF
BALTIMORE CITY

Docket:
Folio :
File :

PETITION FOR DECLARATORY JUDGMENT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Petitioner, Karson's Inn, Inc., by Robert F. Skutch, Jr., William W. Cahill, Jr., and Weinberg and Green, its attorneys, respectfully represents unto this Court:

1. That this Petition for a Declaratory Judgment is brought under and by virtue of the provisions of Article 31A, Section 2 of the Annotated Code of Maryland (1957 Edition) by Karson's Inn, Inc. to have this Honorable Court declare, in whole or in part, null and void, Ordinance No. 1249 which repealed and reordained, with amendments, Sections 8, 9, 11 and 12 of Article 14A of the Baltimore City Code (1950 Edition) entitled "Human Relations" and sub-titled "Baltimore Equal Employment Opportunity Commission" as ordained by Ordinance No. 379, approved April 18, 1956, and as amended by Ordinance No. 409, approved July 6, 1960, said Ordinance No. 1249 having added a new section numbered "10A" to follow immediately after Section 10 of said Article 14A of the Baltimore City Code (1950 Edition).

2. That on June 8, 1962, the aforesaid Ordinance No. 1249 was duly approved by the Mayor of Baltimore City and said ordinance thereupon took affect and amended Article 14A of the Baltimore City Code as of June 8, 1962, and, as of the date of

CLERK

James J. Carney

TRUE COPY
TEST:

filing herein is in effect as an ordinance of the City of Baltimore. A certified copy of said ordinance is annexed hereto as Exhibit "A".

3. That at all times herein mentioned your Petitioner is a corporation organized and existing under the laws of Maryland and was and still is regularly engaged in the restaurant business namely the business of serving meals for consideration and dealing in the sale of alcoholic beverages and was and is at all times herein mentioned the owner and operator of a place of business trading as Karson's Inn which is located at 5104 Holabird Avenue within the City of Baltimore and said place of business comes within the scope of Ordinance No. 1249.

4. That the cause of justice requires that the aforesaid Ordinance No. 1249 be declared null and void in the respects hereinafter set forth and that your Petitioner's rights and status be adjudicated and settled so that it may be relieved from the discriminatory provisions as well as the uncertainty and insecurity precipitated by the passage of Ordinance No. 1249.

FOR A FIRST SEPARATE AND DISTINCT CAUSE OF COMPLAINT

5. That the aforesaid Ordinance No. 1249 is null and void in that it violates Amendment XIV to the Constitution of the United States in that said ordinance denies your Petitioner equal protection of the law without any reasonable basis whatsoever, by arbitrarily and unreasonably classifying your Petitioner's business in that it does not affect and treat equally and alike all corporations or persons engaged in businesses like or similar to the business engaged in by your Petitioner in the following respects to wit:

(a) Said Ordinance No. 1249 does not apply equally and without discrimination to all corporations or

persons within the class of corporations or persons engaged in the restaurant business, namely, those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages, in that said ordinance prohibits certain or a portion of the corporations or persons within the class engaged in the restaurant business, including your Petitioner, from time to time, denying entry and the use of the facilities and privileges of said places of business because of race, color, creed or national origin, merely because the average daily receipts from the sale of alcoholic beverages is less than the average daily receipts from the sale of food; whereas said ordinance permits certain or a portion of the persons or corporations within the aforesaid class, not including your Petitioner, from time to time, to deny entry and the use of the facilities and privileges of said places of business because of race, color, creed or national origin, merely because the average daily receipts from the sale of alcoholic beverages is more than the average daily receipts from the sale of food.

(b) Said Ordinance No. 1249 does not apply equally and without discrimination to all corporations or persons within the class of corporations or persons engaged in the restaurant business, namely those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages in that said ordinance prohibits certain or a portion of the corporations or persons engaged in the restaurant

business, including your Petitioner, from time to time ejecting from their places of business a person or persons because of his race, color, creed, or national origin, and claiming a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition) against said person or persons, merely because the average daily receipts from the sale of alcoholic beverages is less than the average daily receipts from the sale of food; whereas said ordinance permits, certain, or a portion of the corporations or persons, within the aforesaid class, not including your Petitioner, from time to time, to eject from their places of business a person or persons because of his race, color, creed, or national origin, and claim a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition), against said person or persons, merely because the average daily receipts from the sale of alcoholic beverages is more than the average daily receipts from the sale of food.

(c) Said Ordinance No. 1249 does not apply equally and without discrimination to all corporations or persons within the class of corporations or persons engaged in the restaurant business, namely, those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages, in that said ordinance prohibits certain or a portion of the corporations or persons engaged in the restaurant business, including your Petitioner, from time to time, denying entry and the use of the facilities and privileges of part or parts of their

ordinance permits certain or a portion of the corporations or persons engaged in the restaurant business, not including your Petitioner, from time to time, to eject from part or parts of their places of business a person or persons because of his race, color, creed or national origin and claim a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition), against said person or persons, merely because part or parts of the restaurant are primarily devoted to the sale of alcoholic beverages.

places of business because of race, color, creed or national origin, merely because part or parts of the restaurant are not primarily devoted to the sale of alcoholic beverages; whereas said ordinance permits certain or a portion of the corporations or persons within the aforesaid class, not including your Petitioner, from time to time, to deny entry and the use of part or parts of the facilities and privileges of their places of business because of race, color, creed or national origin, merely because part or parts of the restaurant are primarily devoted to the sale of alcoholic beverages.

(d) Said Ordinance No. 1249 does not apply equally and without discrimination to all persons or corporations within the class of corporations or persons engaged in the restaurant business, namely, those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages, in that said ordinance prohibits certain or a portion of the corporations or persons within the class engaged in the restaurant business, including your Petitioner, from time to time, ejecting from part or parts of his place of business a person or persons because of his race, color, creed or national origin, and claiming a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition), against said person or persons, merely because part or parts of the restaurant are not primarily devoted to the sale of alcoholic beverages; whereas said

FOR A SECOND SEPARATE AND DISTINCT CAUSE OF COMPLAINT

6. That the aforesaid ordinance No. 1249 is null and void in that it violates Articles 19, 23 and 44 of the Declaration of Rights of the Constitution of Maryland and Amendment XIV to the Constitution of the United States in that said ordinance, without any reasonable basis whatsoever, arbitrarily grants special privileges to corporations or persons, other than your Petitioner, which are engaged in a class of businesses like or similar to the business engaged in by your Petitioner in the following respects, to wit:

(a) Said ordinance No. 1249 permits and grants the special privilege to certain or a portion of the corporations or persons within the class of corporations or persons, other than your Petitioner, engaged in the restaurant business, namely, those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages, from time to time, to deny entry and use of the facilities and privileges of their places of business because of race, color, creed or national origin, merely because the average daily receipts from the sale of alcoholic beverages is more than the average daily receipts from the sale of food; whereas said ordinance denies to certain or a portion of the corporations or persons within the aforesaid class of corporations or people engaged in the restaurant business, including your petitioner, the privilege of denying entry and use of the facilities and privileges of their places of business because of race, color, creed or national origin, merely because the average daily receipts from the sale of alcoholic beverages is less than the average daily receipts from the sale of food.

(b) Said Ordinance No. 1349 permits and grants the special privilege to certain or a portion of the corporations or persons, other than your Petitioner, engaged in the restaurant business, namely those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages, from time to time, to eject a person or persons because of his race, color, creed or national origin and claim a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition), merely because the average daily receipts from the sale of alcoholic beverages is less than the average daily receipts from the sale of food; whereas said Ordinance No. 1349 denies to certain or a portion of the corporations or persons, including your Petitioner, within the aforesaid class of corporations or people, the privilege to eject a person or persons because of his race, color, creed or national origin and claim a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition) against said person or persons merely because the the average daily receipts from the sale of alcoholic beverages is less than the average daily receipts from the sale of food.

(c) Said Ordinance No. 1349 permits and grants the special privilege to certain or a portion of the corporations or persons within the class of persons, other than your Petitioner, engaged in the restaurant business, namely those which are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages from time to time, to deny entry and use of part

or parts of the facilities and privileges of part or parts of their places of business because of race, color, creed or national origin merely because part or parts of the restaurant are primarily devoted to the sale of alcoholic beverages; whereas said ordinance denies to certain or a portion of the corporations or persons within the aforesaid class of corporations or persons engaged in the restaurant business, including your Petitioner, the privilege of denying entry and use of the facilities and privileges of their places of business because of race, color, creed or national origin, merely because part or parts of the restaurant are not primarily devoted to the sale of alcoholic beverages.

(d) Said ordinance No. 1249 permits and grants the special privilege to certain or a portion of the corporations or persons, other than your Petitioner, engaged in the restaurant business, namely those who are in the business of serving meals for a consideration and dealing in the sale of alcoholic beverages, from time to time, to eject from part or parts of the restaurant a person or persons because of his race, color, creed or national origin and claim a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition) against said person or persons, merely because part or parts of the restaurant are primarily devoted to the sale of alcoholic beverages; whereas said ordinance No. 1249 denies to certain or a portion of the corporations or persons within the aforesaid class of corporations or persons engaged in the restaurant business, including your Petitioner, the privilege

to eject a person or persons because of his race, color, creed or national origin and claim a trespass under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition) against said person or persons, merely because part or parts of the restaurant are ^{not} primarily devoted to the sale of alcoholic beverages.

FOR A THIRD SEPARATE AND DISTINCT CAUSE OF COMPLAINT

7. That the aforesaid Ordinance No. 1249 is null and void in that it violates Article XI-A, Section 3 of the Constitution of Maryland in that said ordinance is a local law in conflict with the Public General Law, namely Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition) in the following respects to wit:

(a) Said Ordinance No. 1249 prohibits your Petitioner from refusing, withholding from or denying to any person the facilities of its place of business because of race, color, creed or national origin on the ground that said person or persons is a trespasser; whereas said Article 27, Section 577 of the Annotated Code of Maryland permits your Petitioner to exclude or have ejected from its premises and place of business any person for any reason including, but not limited to, race, color, creed or national origin on the grounds that said person or persons are trespassers.

(b) Said Ordinance No. 1249 permits any person regardless of race, color, creed or national origin to enter upon and use the facilities and privileges of its place of business against the will, wishes and protests of your Petitioner; whereas said Article 27, Section 577 of the Annotated Code of Maryland prohibits and subjects to fine and imprisonment any person regardless of race, color, creed or national origin from entering upon and using the facilities of its place of business against the will, wishes and protests of your Petitioner.

FOR A FOURTH SEPARATE AND DISTINCT CAUSE OF COMPLAINT

8. That the aforesaid Ordinance No. 1249 is null and void or in need of a declarative interpretation in that it is vague, indefinite and obscure in its wording and phraseology and does not set up any definitive standard of conduct or practice by which your Petitioner may be guided and thereby subjects it to uncertainty and insecurity with respect to his rights, obligations and status under said ordinance in the following respects to wit:

(a) Your Petitioner's total receipts from alcoholic beverages vis-a-vis. foods differ and vary from time to time and it is unable to ascertain at any time on any particular day or from day to day, without great expense, difficulty and uncertainty whether its average daily receipts from the sale of alcoholic beverages exceeds the average daily receipts from the sale of food and, accordingly, whether its place of business comes within the aforesaid Ordinance No. 1249.

(b) Your Petitioner's total receipts from alcoholic beverages vis-a-vis foods differ and vary from time to time in different parts, as well as in the same part, of its place of business and it is unable to ascertain at any particular time or on any particular day, without great expense, difficulty and uncertainty whether part or parts or the same part of its restaurant are primarily devoted to the sale of alcoholic beverages, and, accordingly, whether part or parts of its place of business comes within the aforesaid ordinance No. 1249.

(c) Your Petitioner is uncertain and insecure as to the meaning of the term "part or parts of such restaurant establishments" as contained in the aforesaid ordinance since said ordinance does not in any way define said term or delineate with any degree of precision what is necessary or required to separate said part or parts and your Petitioner is uncertain and insecure as to what part or parts of its restaurant comes within the aforesaid ordinance No. 1249.

(d) Your Petitioner is uncertain and insecure as to the meaning of the term "primarily devoted to the sale of alcoholic beverages" contained in the aforesaid ordinance since said ordinance does not in any way define said term with any degree of precision and your Petitioner is uncertain as to what part or parts of its restaurant may be considered as being "primarily devoted to the sale of alcoholic beverages" and within said ordinance No. 1249.

(e) Your Petitioner is uncertain and insecure as to the meaning of the term "average daily receipts"

contained in the aforesaid ordinance since said ordinance does not in any way define with any degree of precision whether said term means total daily receipts, or averaged from hour to hour, day to day, weekly, monthly or yearly and accordingly, your Petitioner is uncertain and insecure as to what method should be employed so that it may ascertain with some degree of precision and certainty whether it comes within the aforesaid Ordinance No. 1249.

(f) Your Petitioner is uncertain and insecure as to whether his entire place of business or part or parts of his place of business come within the aforesaid Ordinance No. 1249 for the reasons inter alia set forth in 7 (a) (b) (c) and (d) above; and accordingly, is fearful and uncertain that it will be subjected to actions and suits for false arrest should it initiate an action under Article 27, Section 577 of the Annotated Code of Maryland (1957 Edition), and exclude or have ejected and arrested certain persons from or in its entire place of business or part or parts thereof on the grounds of race, color, creed, or national origin.

WHEREFORE, your Petitioner respectfully prays:

A. That the respondent be required to answer the charges herein and that an order may issue declaring Ordinance No. 1249 of the City of Baltimore in whole or in part illegal, null and void in the respects complained of;

B. That your Petitioner shall have such other and further relief as this Honorable Court may deem proper in the premises; and

C. That your Petitioner shall have the costs of this action.

By Rudolf Karson, President

Robert F. Skutch, Jr.

William W. Cahill, Jr.

Weinberg and Green
10 Light Street
Baltimore 2, Maryland

LExington 9-2125

STATE OF MARYLAND)

(
CITY OF BALTIMORE)

ss.

I HEREBY CERTIFY that on this day of ,
1962, before me, the subscriber, a Notary Public of the State of
Maryland, City of Baltimore aforesaid, personally appeared
Rudolf Karson, President, Karson's Inn, Inc., and made oath
in due form of law that the matters and facts set forth in the
aforegoing Petition for Declaratory Judgment are true to the
best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal the day and year
first above written.

Notary Public

EXHIBIT "A"

Introduced by Mr. Dixon.

City Council 1509

ORDINANCE NO. 1249

An ordinance to repeal and reordain, with amendments, Sections 8, 9, 11 and 12 of Article 14A of the Baltimore City Code (1950 Edition), title "Human Relations", sub-title "Baltimore Equal Employment Opportunity Commission", as said sub-title was ordained by Ordinance No. 379, approved April 18, 1956, and amended by Ordinance No. 409, approved July 6, 1960, and to add a new Section 10A thereto, to follow immediately after Section 10 thereof, amending the Equal Employment Opportunity Ordinance in order to prohibit in Baltimore City discrimination on the basis of race, creed, color or national origin in certain places of public accommodation which provide sleeping accommodations or serve meals for a consideration, placing the administration and enforcement of this prohibition within the Baltimore Equal Employment Opportunity Commission, changing the name of said Commission to be Baltimore Equal Opportunity Commission, and providing for the continuation of the old Commission in the new Commission, changing the name of said sub-title to be "Baltimore Equal Opportunity Commission", and relating generally to the prohibition of discrimination in certain places of public accommodation in Baltimore City on the basis of race, creed, color or national origin.

By the City Council of Baltimore, October 2, 1961.

Introduced, read first time and referred to the Baltimore Equal Employment Opportunity Commission and the Judiciary Committee.

By order, EDWARD L. HEALY, JR., Chief Clerk.

By the City Council of Baltimore, October 23, 1961.

Re-referred to the Committee on Judiciary.

By order, EDWARD L. HEALY, JR., Chief Clerk.

REPORT OF COMMITTEE

With recommendations.

HENRY R. HERGENROEDER, Chairman.

By the City Council of Baltimore, May 28, 1962.

Ordinance substituted for report, amendment offered from floor; amendment adopted, read second time and ordered printed for third reading.

By order, EDWARD L. HEALY, JR., Chief Clerk

ORDINANCE

No. 1249

An ordinance to repeal and re-ordain, with amendments, Sections 8, 9, 11 and 12 of Article 14A of the Baltimore City Code (1950 Edition), title "Human Relations", sub-title "Baltimore Equal Employment Opportunity Commission", as said sub-title was ordained by Ordinance No. 379, approved April 18, 1956, and amended by Ordinance No. 409, approved July 6, 1960, and to add a new Section 10A thereto, to follow immediately after Section 10 thereof, amending the Equal Employment Opportunity Ordinance in order to prohibit in Baltimore City discrimination on the basis of race, creed, color or national origin in certain places of public accommodation which provide sleeping accommodations or serve meals for a consideration, placing the administration and enforcement of this prohibition within the Baltimore Equal Employment Opportunity Commission, changing the name of said Commission to be Baltimore Equal Opportunity Commission, and providing for the continuation of the old Commission in the new Commission, changing the name of said sub-title to be "Baltimore Equal Opportunity Commission" and relating generally to the prohibition of discrimination in certain places of public accommodation in Baltimore City on the basis of race, creed, color or national origin.

- 1 SECTION 1. *Be it ordained by the Mayor and City*
- 2 *Council of Baltimore, That Sections 8, 9, 11 and 12*
- 3 *of Article 14A of the Baltimore City Code (1950*
- 4 *Edition), title "Human Relations", sub-title "Balti-*
- 5 *more Equal Employment Opportunity Commission",*
- 6 *as said sub-title was ordained by Ordinance No.*
- 7 *379, approved April 18, 1956, and amended by*

8 Ordinance No. 409, approved July 6, 1960, be and
9 they are hereby repealed and re-ordained, with
10 amendments; that a new Section 10A be and it is
11 hereby added thereto, to follow immediately after
12 Section 10 thereof; that the name of the sub-
13 title be and it is hereby changed to "Baltimore
14 Equal Opportunity Commission", and all to read
15 as follows:

1 8. The Mayor and City Council of Baltimore finds
2 that the population of this city is composed of
3 peoples of many diverse racial, religious and other
4 ethnic groups. The practice of discrimination in
5 employment against members of these groups and
6 the consequent failure to utilize the productive
7 capacities of individuals to their fullest extent de-
8 prives large segments of the population of this
9 city of earnings necessary to maintain decent
10 standards of living, necessitates their resort to
11 public relief and intensifies racial, religious and
12 ethnic intolerance thereby resulting in grave injury
13 to the public health and welfare. The practice by
14 diverse places of public accommodation of refusing
15 to accommodate and serve members of these groups
16 also tends to exacerbate intergroup relations there-
17 by impairing the public welfare. It is hereby de-
18 clared to be the public policy of this City to foster
19 the employment of all persons in accordance with
20 their fullest capacities, and to accommodate and
21 serve persons in diverse places of public ac-
22 commodation, regardless of the race, color, religion,
ancestry or national origin of such persons.

1 9. The term "person", as used in this ordinance,
2 shall include an individual, partnership, corporation,
3 union or association, including those acting in a
4 fiduciary or representative capacity, whether ap-
5 pointed by a court or otherwise. Whenever used
6 in any clause prescribing and imposing a penalty,
7 the term "person", as applied to partnerships,
8 unions or associations, shall mean the partners or

9 members thereof and as applied to corporations,
10 the officers thereof. The singular shall include the
11 plural and the masculine shall include the feminine
12 and neuter.

13 The term "employer", as used in this ordinance
14 shall include every person, as hereinabove defined,
15 who employs fifteen or more employees, exclusive
16 of parents, spouse or children of such person. The
17 term, however, shall not include fraternal, sectarian,
18 charitable, religious or private educational organiza-
19 tions but shall include any governmental unit,
20 agency or employee as to which the City has the
21 power to legislate.

22 The term "labor organization" shall include any
23 organization which exists for the purpose, in whole
24 or in part, of collective bargaining or of dealing
25 with employer's concerning grievances, terms or
26 conditions of employment or of other mutual aid
27 or protection in relation to employment.

28 The term "employment agency" shall include
29 every person, as hereinabove defined, regularly
30 undertaking in this City, with or without compen-
31 sation, to procure opportunities to work or to pro-
32 cure, recruit, refer, or place employees.

33 The term "employment" shall not include the
34 employment of individuals as domestic servants nor
35 the employment of individuals to serve in personal
36 and confidential positions.

37 The term "place of public accommodation" in-
38 cludes a hotel, motel, inn or restaurant, meaning
39 establishments commonly known or recognized as
40 regularly engaged in the business of providing
41 sleeping accommodations, or serving meals, or both
42 for a consideration, and which are open to the gen-
43 eral public. The term "place of public accommoda-
44 tion" does not apply to those establishments com-

45 monly known and recognized as boarding houses
46 or rooming houses, to lunch counters or refresh-
47 ment stands maintained in places of recreation or
48 amusement such as bowling alleys, billiard halls, or
49 swimming pools. Also the term "place of public
50 accommodation" does not apply to those establish-
51 ments dealing in alcoholic beverages where the
52 average daily receipts of the sale of alcoholic
53 beverages exceeds the average daily receipts of
54 the sale of food nor to that part or parts of such
55 restaurant establishments which part or parts are
56 primarily devoted to the sale of alcoholic beverages.

57 The term "comission" means the Baltimore
58 Equal Opportunity Commission created herein.

1 10A. An owner or operator of a place of public
2 accommodation or an agent or employee of said
3 owner or operator shall not, because of the race,
4 color, creed or national origin of any person, refuse,
5 withhold from, or deny to such person any of the
6 accommodations, advantages, facilities and privi-
7 leges of such place of public accommodation.

1 11. (a) There is hereby established the Baltimore
2 Equal Opportunity Commission which shall con-
3 sist of nine members who shall be appointed by the
4 Mayor subject to approval by the City Council. Any
5 five members of the Commission shall constitute a
6 quorum. They shall serve without compensation
7 but shall be reimbursed for all expenses necessarily
8 incurred. Each member of the Commission shall
9 serve for a period of three years and until his
10 successor is duly appointed and qualified, except
11 that in the case of those first appointed the terms
12 shall be staggered as follows: three to serve for
13 one year; three to serve for two years; and three
14 to serve for three years. The members of the Com-
15 mission shall annually elect a chairman from among
16 the members of the Commission and shall appoint
17 a secretary.

18 (b) The Commission shall appoint such per-
19 sonnel at such compensation as may from time to
20 time be authorized by the Mayor and City Council.

1 12. The Commission is authorized to and shall:

2 (a) Formulate and carry out a comprehensive
3 educational program designed to eliminate and pre-
4 vent prejudice and discrimination based upon race,
5 color, religion, national origin or ancestry.

6 (b) Receive and investigate and seek to adjust
7 all complaints of unfair employment practices or
8 unfair accommodation practices forbidden by this
9 ordinance, but no complaint shall be received unless
10 made to the commission within thirty days of such
11 alleged unfair practice. Unfair employment prac-
12 tices and unfair accommodation practices, or either,
13 are referred to elsewhere in this sub-title as "un-
14 fair practices."

15 (c) Make and publish, after a public hearing, ap-
16 propriate findings as a result of its investigations.

17 (d) From time to time but not less than once a
18 year, render to the Mayor and City Council a written
19 report of its activities and recommendations.

20 (e) Adopt such rules and regulations as may be
21 necessary to carry out the functions of the com-
22 mission and to effectuate the purposes and provi-
23 sions of this sub-title.

24 (f) Consult with such advisory agencies and
25 conciliation councils as will aid in effectuating the
26 purposes of this sub-title.

27 (g) Have power to administer oaths and issue
28 subpoenas to compel the attendance and testimony
29 of witnesses and the production of books, papers,
30 records and documents relevant or necessary for
31 its investigations and proceedings, the same to
32 be served by the Sheriff of Baltimore City or

33 any of his deputies. In case of disobedience to a
34 subpoena, the Commission may apply to the Court
35 of appropriate jurisdiction of Baltimore City for an
36 order requiring the attendance and testimony of
37 witnesses and the production of books, papers, rec-
38 ords and documents. The Court of appropriate
39 jurisdiction of Baltimore City may, in case of con-
40 tumacy or refusal to obey a subpoena for the at-
41 tendance and testimony of a witness, or the produc-
42 tion of books, papers, records and documents, after
43 notice to the person subpoenaed as a witness or
44 directed to produce books, papers, records and
45 documents and, upon finding that the attendance
46 and testimony of such witness, or the production of
47 such books, papers, records and documents, as the
48 case may be, is relevant or necessary for the in-
49 vestigations and proceedings of the Commission,
50 issue an order requiring the attendance and testi-
51 mony of such witness and the production of such
52 books, papers, records and documents, and any fail-
53 ure to obey such order of the Court of appropriate
54 jurisdiction of Baltimore City may be punished by
55 such Court as a contempt thereof.

1 SEC. 2. *And be it further ordained,* That the
2 Baltimore Equal Opportunity Commission herein
3 provided for is a continuation of the Baltimore
4 Equal Employment Opportunity Commission now
5 functioning pursuant to Ordinance 379, approved
6 April 18, 1956, as amended by Ordinance 409, ap-
7 proved July 6, 1960. Nothing in this ordinance
8 shall be construed to affect or interrupt the con-
9 tinuity of the former Baltimore Equal Employment
10 Opportunity Commission or the membership there-
11 of or the appropriations thereto. It is the intent
12 of this ordinance with respect to the former Balti-
13 more Equal Employment Opportunity Commission
14 simply to change the name and to enlarge the duties
15 thereof.

1 SEC. 3. *And be it further ordained*, That this
2 ordinance shall take effect from the date of its
3 passage.

Approved..... JUN 8 1962

(signed) J. Harold Grady
.....
Mayor of Baltimore City.

(signed) Philip H. Goodman
.....
President of the City Council of Baltimore.

Presented to His Honor, the Mayor, this..... 5th

day of..... June 1962

By order, EDWARD L. HEALY, JR., Chief Clerk.

A TRUE COPY

C. Meredith Boyce
Treasurer

I HEREBY CERTIFY That this is a true copy of
Ordinance No. 1249, of the Mayor and City Council of Baltimore,
approved June 8, 1962.

IN TESTIMONY WHEREOF I have hereunto set my hand
as Deputy Treasurer, and affixed the seal of the Mayor and City
Council of Baltimore this 11th day of June, 1962.


DEPUTY TREASURER

Examined and approved by Committee.

(signed) Edward P. O'Malley

Reading Clerk.

(signed) Rossby M. Carr

Chief Committee Clerk.

By the CITY COUNCIL OF BALTIMORE

June 4196*2*

Read the third time and passed by yeas and nays.

By order,

(Signed) Edward L. Healy, Jr.

Chief Clerk.

Journal Pages

First Reading *10/2/61* *466*

Second Reading *5/28/62* *-*

Third Reading *6/4/62* *-*

Vote on final passage: Yeas *13* Nays *7*

SUPERIOR COURT OF BALTIMORE CITY

WRIT OF SUMMONS

July Return Day No. 180

File No. 74578

Docket 1962

Folio 990



STATE OF MARYLAND

BALTIMORE CITY, to wit:

To THE SHERIFF OF BALTIMORE CITY, GREETING:

You are hereby commanded to summon

Mayor and City Council of Baltimore,
SERVE ON: Francis B. Burch
City Solicitor, Court House
Baltimore 2, Maryland, and
Thomas B. Finan
Attorney General of Maryland
Maryland National Bank Building
Baltimore 2, Maryland

of Baltimore City, to the Superior Court of Baltimore City on the FIRST MONDAY of
July

next to answer an action at the suit of

Karson's Inn, Inc.

and have you then and there this writ.

Witness the HONORABLE EMORY H. NILES, Chief Judge of the Supreme
Bench of Baltimore City, the 14th day of May 1962
Issued 13th day of June 1962

TO THE PERSON SUMMONED:

Personal attendance in Court on the day named in the summons is not required; you have fifteen days from the day named to answer or make your defense. If you fail to assert a defense within the time named, the plaintiff may obtain judgment by default against you, which may be extended to final judgment upon proper proof of damages.

Plaintiff's Attorney
Robert F. Skutch, Jr.,
(Name) William W. Cahill, Jr.
Weinberg and Green
(Address) 10 Light Street - 2

James F. Carney
Clerk
Filed _____

NOTICE TO SHERIFF

The following papers are to be served on each defendant:

Copy of Writ and Notice to Plead. Copy of ~~Writ~~ Petition for Declaratory
~~Copy of Motion for Summary Judgment, Affidavit and Notice of Motion.~~ Judgment.
~~Copy of Third Party Complaint, Notice and Copy of Writ.~~

Article

Paper

6667

IN THE
SUPERIOR COURT OF BALTIMORE CITY

SEPTEMBER TERM, 1962

KARSON'S INN, INC.

Petitioner

v.

MAYOR AND CITY COUNCIL
OF BALTIMORE

Respondent

MEMORANDUM OF LAW ON BEHALF
OF THE MAYOR AND CITY COUNCIL
OF BALTIMORE

FRANCIS B. BURCH
City Solicitor

GEORGE W. BAKER, JR.
Deputy City Solicitor

MARTIN B. GREENFELD
Assistant City Solicitor

For Respondent

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KARSON'S INN, INC.	:	IN THE
		SUPERIOR COURT
Petitioner	:	
		OF
vs.	:	BALTIMORE CITY
MAYOR AND CITY COUNCIL OF BALTIMORE	:	162/990/74578
Respondent	:	
	:	
	:	

MEMORANDUM OF LAW ON BEHALF OF THE
MAYOR AND CITY COUNCIL OF BALTIMORE

STATEMENT OF THE CASE

The Petitioner, Karson's Inn, Inc., seeks a Declaratory Judgment, pursuant to Art. 31A, Sec. 2 (Md. Code, 1957 Edition) as to the validity vel non of all or part of Ordinance No. 1249, approved June 8, 1962, by the Mayor and City Council of Baltimore.

ORDINANCE INVOLVED

Sec. 8 of Ordinance No. 1249 (sometimes hereinafter referred to as "the Ordinance") enunciates the finding of the Mayor and City Council of Baltimore that the population of Baltimore City is composed of many diverse racial, religious and other ethnic groups and, inter alia, that

"The practice by diverse places of public accommodation of refusing to accommodate and serve members of these groups also tends to exacerbate intergroup relations thereby impairing the public welfare. It is hereby declared to be the public policy of this City to . . . accommodate and serve persons in diverse places of public accommodation, regardless of race, color, religion, ancestry or national origin of such persons."

Section 9 of the Ordinance defines a "place of public accommodation" as "a hotel, motel, inn or restaurant . . . engaged in the business of providing sleeping accommodations, or serving meals, or both for a consideration, and which are open to the general public."

The term "place of public accommodation" specifically does not apply, inter alia, to

" . . . those establishments dealing in alcoholic beverages where the average daily receipts of the sale of alcoholic beverages exceeds the average daily receipts of the sale of food nor to that part or parts of such restaurant establishments which part or parts are primarily devoted to the sale of alcoholic beverages."

Section 10A of the Ordinance prohibits the owner or operator of a "place of public accommodation" from denying its facilities to any person because of the race, color, creed or national origin of such person.

The validity of the remedies for enforcing a violation of the Ordinance is not here in question.

QUESTIONS PRESENTED

I. Is the Classification made in Ordinance No. 1249 a reasonable one in conformity with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Articles 19, 23 and 44 of the Maryland Declaration of Rights?

II. Is the wording of Ordinance No. 1249 vague, indefinite or uncertain?

A. Is the phrase "average daily receipts" vague, indefinite or uncertain?

B. Is the phrase "primarily devoted to the sale of alcoholic beverages" vague, indefinite or uncertain?

C. Is the phrase "part or parts of such restaurant establishments" vague, indefinite or uncertain?

III. Is Ordinance No. 1249 in conflict with Article 27, Sec. 577 (Md. Code, 1962 Supp.)?

A. Is Article 27, Section 577, applicable to Baltimore City?

B. Even if Article 27, Section 577, is applicable to Baltimore City, is Ordinance No. 1249 in conflict with it?

ARGUMENT

I.

THE CLASSIFICATION MADE IN ORDINANCE NO. 1249 IS A REASONABLE ONE IN CONFORMITY WITH THE REQUIREMENTS OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLES 19, 23 AND 44 OF THE MARYLAND DECLARATION OF RIGHTS.

Exempted from the purview of Ordinance No. 1249 are (i) those establishments dealing in alcoholic beverages where the average daily receipts of the sale of alcoholic beverages exceeds the average daily receipts of the sale of food and (ii) those parts of restaurant establishments primarily devoted to the sale of alcoholic beverages.

Petitioner contends that these two classifications are not consonant with the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and Article 23 of the Declaration of Rights of the Maryland Constitution.

These various Constitutional guarantees are designed to safeguard virtually the same rights, and for purposes of this argument, they will be referred to collectively as the "Equal Protection Clause." The Court of Appeals has often held that in construing "Article 23 of the Declaration of Rights, the decisions of the Supreme Court on the Fourteenth Amendment are practically direct authority" and that the two Constitutional provisions are "synonymous." Home Utilities Co. v. Revere, 209 Md. 610, 614 (1956); Ousler v. Tawes, 178 Md. 471, 483 (1940). Cf: National Can Corp. v. State Tax Comm., 220 Md. 418, 434-435 (1959), where the Court of Appeals said of Article 15 of the Declaration of Rights (which authorizes classification of personal property): "The similarity of the problem of reasonable classification under . . . our Article 15 and under the Equal Protection Clause of the Fourteenth Amendment is apparent."

The principle is unequivocally established that as regards the Equal Protection Clause, legislative bodies are given extremely broad latitude in classification. As was said by the Supreme Court of the United States in McGowan v. Maryland, 366 U.S. 420, 425-426 (1961), in upholding the validity of the Blue Laws:

"Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." (Emphasis supplied)

These principles have been enunciated and followed by the Court of Appeals of Maryland in National Can Corp. v. Tax Comm., 220 Md. 418, 430, 434 (1960), quoting Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959). Both cases involved the validity of classifications for tax purposes, but McGowan v. Maryland, supra, does not so limit the application of these doctrines.

That the City Council did not state its reasons for creating the two exemptions from the Ordinance is of no significance. As was said in Mayor and City Council of Baltimore v. German A.F.I. Co., 132 Md. 380, 387 (1918):

" . . . The statute, upon its face, does not disclose the policy or motive by which the Legislature was activated in granting the exemption under the statute, and this is not essential to its validity. It is valid if the discrimination is founded upon public policy or upon a reasonable distinction in principle, and is not an arbitrary discrimination.

* * *

" . . . The wisdom of the exemption is within the discretion of the Legislature and is not subject to control by the Courts." (Emphasis supplied)

To the same effect are National Can Corp. v. Tax Comm.,
supra, 220 Md. at 434, and Allied Stores of Ohio v. Bowers,
supra, 358 U.S. at 528.

From the foregoing, it is readily apparent that the classification in the Ordinance must be upheld so long as "any state of facts reasonably may be conceived to justify it," that are "founded upon public policy or upon a reasonable distinction in principle," and that do not exceed the "wide scope of discretion" afforded the legislative body.

Therefore, it is not necessary for this Court to find as a matter of fact why the City Council created the classification in Ordinance No. 1249. If any facts reasonably may be conceived to justify the classification, that is all that is required. We can suggest at least two sets of facts that can be so conceived.

First: It can be said that the City Council was not concerned with affording everyone the right to drink in public places, but it recognized the necessity of affording everyone the right to eat in public places. By enacting the Ordinance, the City Council thus intended to end segregation in restaurants, but not in taverns. The Ordinance defines restaurants as those establishments where the average daily receipts of the sale of food exceed the average daily receipts of the sale of alcoholic beverages. This is precisely the same definition of "restaurant" as used by the General Assembly of Maryland in Article 2B, Section 2 (p) (Md. Code, 1957 Ed.), relating to the alcoholic beverage laws. By the same token, the Ordinance excludes

from the scope of the definition those "parts of restaurant establishments . . . primarily devoted to the sale of alcoholic beverages." The Ordinance differentiates between those places, or parts of places, where eating predominates or is primary and those where drinking predominates or is primary. The former are classified as restaurants; the latter are not.

It might here be noted that it is a known fact that most, if not all, of the first-rate eating establishments in Baltimore City also serve alcoholic beverages. If the City Council had exempted all establishments that served liquor, as Petitioner suggested in oral argument should have been done, then this would close the doors of the more desirable restaurants in the City to the minorities sought to be protected. In that event, the law against racial discrimination would be relegated to second-rate restaurants. And second-rate civil rights legislation would completely ineffectuate the very purpose the City Council had in enacting the Ordinance here in question: permitting integration in good restaurants.

The Ordinance definition of restaurants is based upon the simple distinction between a place where eating predominates or is primary and a place where it is not. Assuredly, this is founded upon a "reasonable distinction in principle," Mayor and City Council of Baltimore v. German A.F.I. Co., supra. That is all that is necessary to sustain a classification under the Equal Protection Clause.

Second: The following state of facts would also justify the Ordinance classification. The inhabitants of the City of Baltimore have long followed a policy of segregating the races in establishments open to the public. Indeed it has only been in recent years that the public schools and municipal public swimming pools were desegregated, and in several instances this process of desegregation has, unfortunately, been met with violence and strife. The bare fact of the matter is that there still exists a racial prejudice by some segments of our society which lends itself to disorderly conduct.

The City Council was, of course, cognizant of these factors, and in considering the legislation at hand, was undoubtedly faced with a twin-horned dilemma. On the one hand, it desired to enact a law prohibiting segregation in hotels and restaurants, and on the other hand, it would have recognized that such a law would be a change from a deeply-rooted custom practiced in Baltimore City for hundreds of years. That a desegregation law of this type would meet with patent disapproval by some portions of our society would have been all too evident. Realizing that such legislation might cause, in some quarters, emotionally charged reactions and also realizing the effect of the consumption of alcoholic beverages on human conduct, the City Council, by restricting the coverage of Ordinance No. 1249 to establishments where the sale of alcoholic beverages is not predominant, could reasonably have sought to minimize the danger of alcoholic-inspired violence while enacting legislation that would advance the meritorious principle of equal opportunity for all people.

It cannot be refuted that the police power of the City Council extends at least to that point where it can minimize the danger of an outbreak of public violence. And if a person's behavior may be affected by his consumption of alcoholic beverages, then it cannot be said that the exemptions in the Ordinance, if based solely on that reason, are not "founded upon public policy or upon a reasonable distinction in principle". Mayor and City Council of Baltimore v. German A.F.I. Co., supra; National Can Corp. v. Tax Comm., supra, 220 Md. at 434. That is a state of facts that can reasonably be conceived to sustain the classifications in the Ordinance. In that regard, we would point out, as most analogous, the laws in many states (including Art. 51, Sec. 124 of the Annotated Code of Maryland) prohibiting boxing, sparring or wrestling performances in a building where liquor is sold.

What was said by Mr. Justice Cardozo in Williams v. Mayor, 289 U.S. 36, 41-42 (1933), in speaking of the rule of uniformity of Article 15 of the Maryland Declaration of Rights, is equally apropos here:

"The Courts of Maryland hold that the rule of uniformity established by these provisions does not forbid the creation of reasonable exemptions in furtherance of the public good. . . . The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way."

It is difficult to categorize the classifications in Ordinance No. 1249 as "wholly vain or fanciful."

The Petitioner contended in oral argument that it is just as possible for a person to come under the influence of alcohol in an establishment where the food sales predominate as where liquor sales predominate. Of course it is true that this could happen, but that is not the answer to the question. The question is whether it is more likely that this will happen in one type of establishment than in another. If there be any merit at all to the rationale that the likelihood of racial outbursts is greater in an establishment where the sale of alcoholic beverages is primary than in an establishment where the sale is not, then the classification must be sustained. The possibility that the legislative purpose of desegregation could be better achieved by prohibiting every restaurant and tavern from segregating does not affect the validity of the classification. Thus in Allied Amer. Mut. F. Ins. Co. v. Com'r of Motor Vehicles, 219 Md. 607, 624 (1959), involving classification of insurance companies, the Court said:

"If the classification made by the legislature is otherwise justified, there can be no sound complaint that the legislative purpose might be better or more fully achieved by other or more expansive and inclusive legislation."

Furthermore, the Petitioners cannot be heard to argue that the likelihood of a public disturbance is the same in an establishment where food sales are 49% of the total sales as in an establishment where food sales constitute 51% of the total. Of course the distinction is slight in those instances, but the simple answer is that classification always involves drawing a line, and the Court

certainly cannot say that the line here drawn is irrational. For example, the Unemployment Compensation Act of Alabama provided benefits for workers of employers who employed eight or more persons. The argument was made in the Supreme Court, Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 510 (1937) that there was no distinction between an employer of seven persons and one of eight, and therefore the classification was unconstitutional. In upholding the classification, the Court said (301 U.S. at 510-511):

"Distinctions in degree, stated in terms of differences in number, have often been the target of attack, see Booth v. Indiana, 237 U.S. 391, 397 59 L. ed. 1011 1017 35 S. Ct. 617. It is argued here, and it was ruled by the court below, that there can be no reason for a distinction, for purposes of taxation, between those who have only seven employees and those who have eight. Yet, this is the type of distinction which the law is often called upon to make. It is only a difference in numbers which marks the moment when day ends and night begins, when the disabilities of infancy terminate and the status of legal competency is assumed. It separates large incomes which are taxed from the smaller ones which are exempt, as it marks here the difference between the proprietors of larger businesses who are taxed and the proprietors of smaller businesses who are not."

See also McBriety v. City of Baltimore, 219 Md. 223 (1959), where the Court of Appeals upheld a Baltimore City ordinance regulating multiple family dwellings. The appellant then contended that the ordinance was discriminatory, for it regulated dwellings of more than two units to the exclusion of one-and-two dwelling units. In upholding the classification, the Court said (219 Md. at 236):

" . . . the legislature may make distinctions of degree having a rational basis; and they will be presumed to rest on that basis if there be any conceivable state of facts which would afford reasonable grounds for its action."

The distinctions drawn in the Ordinance, based upon the degree to which alcoholic beverages are sold on the premises, are no less discriminatory than the multitude of other classifications upheld by the courts as constitutional legislation. See, for example, McGowan v. Maryland, 366 U.S. 420 (1961), where the statute there in question permitted Sunday sales by operators of bathing beaches and amusement parks in Anne Arundel County of merchandise customarily sold at, or incidental to, such places. The defendant there contended that the statute violated the Equal Protection Clause because other merchants in Anne Arundel County were prohibited from selling on Sunday the very same products that the operators of bathing beaches and amusement parks were permitted to sell. The Supreme Court, nevertheless, held the discrimination to be a valid one (366 U. S. at 427-428). The classification in Ordinance No. 1249 as between establishments devoted primarily to the sale of food and those devoted primarily to the sale of alcoholic beverages certainly seems no less discriminatory than the classification upheld in McGowan, supra.

Since, as the Petitioner seems to concede, the City Council could validly enact legislation exempting all sellers of alcoholic beverages, why, then, cannot the City Council draw the line at the point where sales of alcoholic beverages predominate or are primary? It is respectfully

submitted, therefore, that the classifications established by Ordinance No. 1249 have rational bases in fact. They reasonably distinguish between restaurants and taverns and also are reasonably calculated to minimize the possibilities of racial disturbances in public establishments, thereby constituting valid legislation in accordance with the Equal Protection Clause of the Constitution of the United States and the Maryland Declaration of Rights.

II.

THE WORDING OF ORDINANCE NO. 1249 IS NOT VAGUE, INDEFINITE OR UNCERTAIN.

A. Average Daily Receipts

Petitioner contends that the phrase "average daily receipts" is vague, indefinite and uncertain, because Petitioner's total receipts vary from day to day and from time to time, and, moreover, because Petitioner is "uncertain and insecure" as to whether said receipts are to be averaged hourly, daily, weekly, monthly or yearly.

This wording in the Ordinance can be readily compared to the similar standard set forth in the Workmen's Compensation Act, Art. 101, Sec. 36 (Md. Code, 1957 Ed.), where disability awards are based on the "average weekly wages" of the employee. That legislation does not state the prior measuring period over which the average weekly wage is to be computed. It has been the law since 1914 and is still the law today. It has not been struck down

because of vagueness. In commenting upon how the "average weekly wages" are to be computed, the Court of Appeals of Maryland, in Campbell Coal Co. v. Stuby, 159 Md. 280, 286-287 (1930), said this:

"To determine this question it was necessary to consider his prior earnings, starting at some earlier time . . . As to the length of time to which the jury may go back in considering the prior earnings of the injured or deceased person in ascertaining his average weekly wage at the time of his injury or death is not fixed by our statute, as in some jurisdictions, the determination of such question is left largely to the discretion of the jury, to be exercised by them according to the facts and circumstances of each particular case."

As can be seen, the term "average weekly wages" is not rendered defective merely because the prior measuring period is not set forth in the statute. It is difficult to see how the standard "average daily receipts" differs in principle from the standard of "average weekly wages." Both require a prior measuring period which is not set forth in the respective legislation.

Furthermore, whatever doubts that may have existed as to the proper measuring for a determination of the phrase "average daily receipts" has been clarified by Regulation No. 4 of the Baltimore Equal Opportunity Commission, adopted July 25, 1962. Sections (1) and (2) of the Regulation provide as follows:

"Average Daily Receipts. (1) The total annual receipts of the sale of alcoholic beverages and the total annual receipts of the sale of food in establishments dealing in alcoholic beverages shall be each divided by the total number of days that such establishment was open for business during said annual period. The resulting two

percentages shall be determinative of ascertaining, for the succeeding annual period, whether or not it is a 'place of public accommodation' where 'the average daily receipts of the sale of food' (as these terms are used in Ordinance No. 1249 of the Mayor and City Council of Baltimore, approved June 8, 1962).

"The first annual period to be used in making the above determination shall be the annual period ending December 31, 1961, and each succeeding annual period shall be co-terminus with the calendar year.

"(2) If an establishment dealing in alcoholic beverages first commences business on or after January 1, 1962, then its total receipts from the sale of alcoholic beverages and the total receipts of the sale of food during the first three months of its operation shall be divided by the total number of days that such establishment was open for business during said three month period. The resulting two percentages shall be determinative of ascertaining for the succeeding three month period, whether or not it is a 'place of public accommodation' where 'the average daily receipts of the sale of alcoholic beverages exceeds the average daily receipts of the sale of food' (as these terms are used in Ordinance No. 1249 of the Mayor and City Council of Baltimore, approved June 8, 1962). Such method of determination shall be utilized until the end of the calendar year during which said establishment first commenced business."

Whether or not an establishment is one where the average daily receipts of the sale of alcoholic beverages exceeds the average daily receipts of the sale of food is now readily ascertainable and definite. In order for an establishment to determine if it comes within the Ordinance, all it need do is compute for the previous calendar year its total receipts from the sale of food and alcoholic beverages. The resulting totals will determine for the succeeding calendar year whether it must comply with the Ordinance. In the case of an establishment that has not been open for a full year, the receipts for the first three months of

its operation determine the establishment's status for the succeeding three months, until the end of the calendar year. This method of calculation is not burdensome and is based on figures readily at hand in most, if not all, business establishments.

An interpretative regulation, "to be valid, must be reasonable and consistent with the letter and policy of the statute under which the agency acts." Comptroller v. Rockhill, Inc., 205 Md. 226, 233 (1954). The administrative regulation in question in that case was held invalid because "in conflict with the statute." (205 Md. at 235). No such claim can be made in the instant case. The Regulation is entirely consistent with the Ordinance and is a reasonable interpretation thereof. Any fears of Petitioner as to the vagueness of the phrase "average daily receipts" have certainly been extinguished by the Regulation.

The Petitioner, in oral argument, contended that the prior calendar year is too remote a measuring period. But even were the Court to agree with that contention, it would affect the validity of the Regulation only, and not the validity of the standard set forth in the Ordinance. Whatever prior measuring period is adopted in the Regulation - whether it be the past year, past six months, or past month - a restaurant owner is precisely apprised of the category into which his business falls. He can ask for no more.

B. Parts "primarily" devoted to the sale of alcoholic beverages

Petitioner further contends that it is uncertain

and insecure as to the meaning of the phrase "primarily devoted to the sale of alcoholic beverages" contained in Ordinance No. 1249. But such a standard has, on numerous occasions, withstood judicial attack. Board of Governors v. Agnew, 329 U.S. 441 (1947), is extremely close in point. There the Supreme Court of the United States was confronted with Section 32 of the Banking Act of 1933, which prohibited, inter alia, any partner or partnership employee from serving as an officer of a member bank of the Federal Reserve System if such partnership was at the same time "primarily engaged in the issue . . . of stocks, bonds, or other similar securities . . . " 26% to 39% of the gross revenues of the company there in question was derived from underwriting, and the issue confronting the Supreme Court was whether that company was "primarily" engaged in underwriting. The partner contended that "primarily" meant "principally"; i.e., that to come within the proscription of the statute, over 50% of the company's business must be derived from underwriting. The Supreme Court rejected this contention and held that "primarily" meant "substantially"; therefore the company's underwriting operators were within the statute. The Court said as follows (329 U.S. at 449):

"There is a suggestion that if 'primarily' does not mean principally but merely connotes substantiality, Sec. 32 constitutes an unlawful delegation of authority to the Board. But we think it is plain under our decisions that if substantiality is the statutory guide, the limits of administrative action are sufficiently definitive or ascertainable so as to survive challenge on the grounds of unconstitutionality." (Emphasis supplied)

It seems clear, therefore, that the Agnew case would foreclose the issue as to vagueness. But further substantiation is found in those cases concerning Sec. 117 (j) (1) (B) of the Internal Revenue Code of 1939, which section subjects to ordinary income, rather than capital gains, treatment "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." Greene-Haldeman v. C.I.R., 282 F. 2d 884 (9th Cir., 1960) held that "primarily" meant "substantially," and Hillard v. C.I.R., 281 F. 2d 279 (5th Circ., 1960) rejected the contention that "primarily" meant "ultimately." It is interesting to note that in neither of these cases was the statutory provision attacked on the ground of vagueness. This is hardly surprising, for, as was said in the Greene-Haldeman case, supra (282 F. 2d at 888), whether the taxpayer's property comes within the statute is "essentially a question of fact."

Even in the absence of the foregoing cases, the wording in the Ordinance would come within the permissible limits laid down by the Court of Appeals of Maryland. In the recent case of McGowan v. State, 220 Md. 117 (1959), the Anne Arundel County Sunday law prohibited, under criminal penalty, the sale of goods, not "customarily sold at" bathing beaches, bathhouses, amusement parks or dancing saloons. In rejecting the defendants' contention that this statute was "unconstitutionally vague," the Court said as follows (220 Md. at 125-126):

"A criminal statute must be sufficiently explicit to enable a person of ordinary intelligence to ascertain with a fair degree of precision

what it prohibits and what conduct on his part will render him liable to its penalties, or it will affront the constitutional guarantees of due process. But such a statute is not void for indefiniteness merely because it exacts the burden of rightly estimating a matter of degree, or because juries may differ in their judgments in cases brought under it on the same state of facts. /Cases cited./ Section 509 clearly informs those who read it as to the type of articles that may be sold on Sunday in Anne Arundel County. We think that a person of ordinary intelligence could know with a fair degree of precision what he could or could not sell.

"As the Supreme Court has noted, a statute is not to be condemned because there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls. United States v. Petrillo, 332 U.S. 1, 7, 91 L. Ed. 1877 (there the statute, upheld against the defense of unconstitutional vagueness, made it a criminal offense to coerce a radio broadcaster to employ, or agree to employ, any persons in excess of the number needed to perform actual services). In Boyce Motor Lines v. United States, 342 U.S. 337, 339, 340, 96 L. Ed. 367, 370, 371, there was involved the regulation of the Interstate Commerce Commission, authorized by 18 U.S.C., Sec. 835, that required a driver of an interstate motor vehicle, transporting explosive or inflammable substances, to avoid 'so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts, and dangerous crossings.' The Supreme Court said, treating the regulation as a criminal statute: ' . . . no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.' " (Emphasis supplied)

On appeal to the Supreme Court of the United States, this statute was upheld as being sufficiently definite. McGowan v. Maryland, 366 U.S. 420, 428 (1961).

It is difficult to see how the standard in the instant case can be characterized as being vague as compared

to the standard upheld in McGowan, and certainly a criminal statute, such as the one in McGowan, imposes a more stringent standard as to vagueness than does civil legislation which is involved here.

Apparently, Petitioner desires an ordinance which sets out a precise formula because it doesn't know what specific percentage of its business must be derived from liquor sales in order to lawfully discriminate as to its clientele. But Petitioner is no less apprised of what is proscribed conduct than is the person employed by a partnership which may or may not be "primarily" engaged in underwriting, Board of Governors v. Agnew, supra. And if the operation of Petitioner's business "goes perilously close" to the line of demarcation established by the Ordinance, then Petitioner must "take the risk that it may cross the line." McGowan v. State, supra, 220 Md. at 125.

C. "Part or parts" of such restaurant establishments

Petitioner's final contention as to vagueness relates to the meaning of the phrase "part or parts of such restaurant establishments" as contained in the Ordinance. In McGowan v. State, 220 Md. 117 (1959), one of the defendants was convicted of selling a toy submarine on a Sunday. The defendant argued for a directed verdict on the ground that the submarine was an item "customarily sold at" a bathing beach. But the Court of Appeals held that it was

"for the trier of fact to decide" whether that commodity was excepted by the statute or not. 220 Md. at 126.

In the instant Ordinance, it is obvious that the term "part or parts" refers to a room or rooms or some other clearly delineated area of the restaurant establishment. And, just as in McGowan, it will be for the "trier of fact to decide" what "part or parts" of a particular operation are primarily devoted to the sale of alcoholic beverages.

What has heretofore been said of McGowan v. State, 220 Md. 117 (1960) in Subsection (B) above as to the degree of explicitness necessary to sustain a statute likewise determines the issue here. Ordinance No. 1249 "clearly informs" even though "there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls." McGowan v. State, supra. Indeed, no such "marginal case" even exists as to the Petitioner's place of business, for the areas there are clearly defined and separated.

III.

ORDINANCE NO. 1249 IS NOT IN CONFLICT WITH ARTICLE 27, SEC. 577 (MD. CODE, 1962 SUPP.)

A. Art. 27, Sec. 577; Is Not Applicable to Baltimore City

Ordinance No. 1249 prohibits Petitioner from excluding anyone from its place of business because of race, color, creed or national origin. Petitioner claims

the right under Art. 27, Sec. 577 to exclude from its place of business anyone because of race, color, creed or national origin on the ground that said person is a trespasser. From this, Petitioner contends that the Ordinance and the Statute being in conflict, the latter prevails. But Art. 27, Sec. 577, is no longer applicable to Baltimore City. Prior to June 1, 1961, Sec. 577 read as follows:

"Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed at any time within ten days after such judgment was rendered; and, provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the contention of this section only to prohibit any wanton trespass upon the private land of others." (Emphasis supplied)

On June 1, 1961, Chapter 616, Acts of 1961, enacted by the General Assembly, became effective. This Act established the Municipal Court in Baltimore City. Section 20 thereof repealed and reenacted Art. 27, Sec. 577, with the deletion of all references to Baltimore City. As presently constituted, therefore, trespass is a crime by virtue of Sec. 577, in the entire State except the City of Baltimore.

(The Petitioner may argue that Sec. 577 still applies to Baltimore City, even though references to the City were deleted, because Art. 1, Sec. 14, of the Maryland Code provides that the "word county shall be construed to include the City of Baltimore, unless said construction would be unreasonable." But it is apparent that if the General Assembly had meant "county" to include the City of Baltimore, it would not have bothered to amend the statute in the first place. Moreover, the words "Criminal Court of Baltimore" were eliminated by the Amendment, thus limiting the right of appeal to the Circuit Court for the county. It certainly cannot be suggested that the term "Circuit Court" includes "Criminal Court of Baltimore." This further evidences the intention of the General Assembly to limit the application of Section 577 to the counties.)

Section 1 of Chapter 616 added Sections 107-129 to Article 26 of the Maryland Code. Section 109 (a) (3) thereof confers upon the Municipal Court of Baltimore City jurisdiction over

"any offense or matter not specifically enumerated herein, which the Justices of the Peace of Baltimore City . . . had jurisdiction to hear, try and determine as of the day immediately preceding the first Monday in May, 1961."

As presently constituted, therefore, trespass is an offense in Baltimore City by virtue of Chapter 616. Chapter 616 is a public local law, rather than a public general law, for it is "confined territorially by its specific terms exclusively to the City of Baltimore," Church Home and Infirmary v. Mayor and City Council, 178 Md. 326, 331 (1940).

Whereas the City would have no power to enact legislation in conflict with a public general law, this limitation does not exist with respect to a public local law. Article XI A, Sec. 3, of the Maryland Constitution, confers upon Baltimore City the power to

"repeal or amend local laws of said City . . . enacted by the General Assembly, upon all matters covered by the express powers granted as above provided . . . "

In speaking of this Section 3, the Court of Appeals has stated:

"Under Section 3, the City, since the adoption of its Charter in November, 1918, has had the power to enact local laws, including the power to repeal or amend local laws enacted by the Legislature, upon all matters covered by the express powers granted by the Legislature. Church Home and Infirmary v. City of Baltimore, 178 Md. 326." Herman v. Mayor & City Council of Baltimore, 189 Md. 191, 196 (1947).

Since trespass is made a crime in Baltimore City by virtue of a public local law, Chapter 616, Acts of 1961, the power of the City to amend such law depends upon whether this is a matter "covered by the express powers granted by the Legislature" to the City.

The Baltimore City Charter, a public local law, confers upon the City the "full power and authority" to "have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limits" (Sec. 6 (24)) and to pass "any ordinance

as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City" (Sec. 6 (39)).

It is immaterial whether the City enacted Ordinance No. 1249 pursuant to its police power (Sec. 6 (24) of the Charter), pursuant to its health and welfare power (Sec. 6 (39) of the Charter), or pursuant to both. These powers are equally conferred and both are express.

The Supreme Court of the United States has recently held that anti-discrimination laws with respect to public restaurants come within the police power of the cities and states. See District of Columbia v. Thompson Co., 346 U.S. 100 (1953), upholding the civil rights legislation in the District of Columbia. See also Marshall v. Kansas City, 355 S.W. 2d 877 (Mo., 1962), where the Supreme Court of Missouri, En Banc, upheld an ordinance forbidding discrimination in restaurants as a valid exercise of the City's police power.

Consequently, even if the Ordinance were in conflict with the trespass law applicable to Baltimore City, the former prevails by virtue of the power emanating from Art. XI A, Sec. 3, of the Maryland Constitution, which enables the City Council to modify the public local law.

B. Even if Article 27, Section 577, is applicable to Baltimore City, Ordinance No. 1249 is not in conflict with it.

But even if the City were to assume arguendo that the trespass law would prevail in the case of conflict with Ordinance No. 1249, it is respectfully submitted that the

two laws are not even in conflict. Art. 27, Sec. 577, contains the following proviso:

" . . . and, provided, further that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others." (Emphasis supplied)

The Mayor and City Council of Baltimore has, by the enactment of Ordinance No. 1249, conferred upon all persons the right to enter any place of public accommodation (as defined in the Ordinance). The "bona fide claim of right" that precludes the operation of the trespass statute is thus conferred by the Ordinance in question. Section 577 does not purport to limit what may constitute a bona fide claim of right, nor does it inhibit the claim of right from arising by way of a local ordinance. Nor does any criminal statute confer private property rights.

The Petitioner relies on Bell v. State, 227 Md. 305 (1962) and Griffin & Green v. State, 225 Md. 422 (1961) for the proposition that persons desirous of entering a restaurant establishment against the wishes of the owner are not within the "bona fide claim of right" exception to Section 577. But there was absent in those cases the crucial feature present here, to wit, an ordinance expressly conferring the right to enter upon one's property. It is this ordinance that supplies the requisite necessary to preclude application of the trespass statute.

Petitioner may argue that the right conferred by Ordinance No. 1249 is not the type of "bona fide claim

of right" contemplated by the state statute. The fallacy of this contention can best be demonstrated by a simple illustration. If Ordinance No. 1249 has been passed first, then certain common law property rights as to trespass would have been revoked. For example, a restaurant owner who excluded persons from his establishment on the basis of race would not have had available a common law action for injunction or damages against those persons who so entered upon his restaurant premises in defiance of the restaurant owner's edict. This is so because the persons entering did so under a bona fide claim of right. If, subsequently, the state trespass law were enacted, it could not be said that there was any conflict with the Ordinance, for the bona fide claim of right already existed. If this be a valid proposition, then no logical reason appears to prevent a subsequent conferring of a "bona fide claim of right" that was not excluded by the state statute.

In short, the "bona fide claim of right" proviso in Section 577 has the effect of permitting a trespass prosecution only where there is a violation of a private property right. The statute does not confer private property rights, and, indeed, it cannot for it is a criminal statute. All Sec. 577 does is enforce existing private property rights. But Ordinance No. 1249 abrogates any common law actions of trespass where a restaurant owner attempts to exclude persons on the basis of race. Therefore, a private property right that previously existed is abrogated. (And, as we have seen, the abrogation of such a private property right is clearly constitutional. District of Columbia v. Thompson, supra.) The State trespass law, to be applicable

here, must confer an additional property right not present at civil law. But a criminal statute cannot confer private rights; it can only enforce them and, therefore, is incapable of extending itself to a private property right that does not even exist.

Furthermore, there are numerous ordinances in the City of Baltimore that permit the entrance upon someone's private property without the consent of the owner. For example, Article 12, Section 120, of the Baltimore City Code (1950 Ed.) permits the Commissioner of Health to "demand entry" into a house where he suspects that a nuisance exists; and the owner of the house is subjected to a fine of \$20.00 if he refuses such entry. This very ordinance was sustained against the attack that it violated the Fourteenth Amendment to the Constitution of the United States. Frank v. State of Maryland, 359 U.S. 360 (1959), reh. den., 360 U.S. 914 (1959). A further example is found in Ordinance No. 1077, approved November 7, 1957, Section 3 (a) (4) of which provides for periodic inspection by City officers of multiple family dwellings.

Both of these ordinances in effect deny to the property owner the right to claim a trespass against the City inspector whose presence is little desired. Certainly it would not be contended that these ordinances conflict with the State trespass law, and it seems beyond argument that the Ordinance here in question would go no further in principle in diluting the owner's right to resort to

the provisions of Section 577, even if that section were applicable to Baltimore City.

What the Petitioner's contention ignores are the simple truths that criminal laws do not confer private property rights and that the State trespass law does not invoke a blanket restriction upon everyone from entering upon private property without the owner's consent. The statute specifically states that it is designed to prevent a "wanton" trespass, namely, an encroachment upon private property without a bona fide claim of right. The requisite claim of right supplied by Ordinance No. 1249 brings the entry to which Petitioner objects within the proviso of the State trespass law.

At the Hearing the Petitioners conceded that a municipality has the right under its police powers to enact an ordinance prohibiting discrimination in hotels and restaurants, in the absence of a public general law prohibiting it. If, in the absence of a State trespass law, the City could validly enact an ordinance prohibiting discrimination in hotels and restaurants, which would thereby confer private rights on the public against the owners of restaurants, it is difficult to understand how it can be contended that any such ordinance would be in conflict with a trespass law which cannot confer private property rights and which merely provides a penalty for the wanton violation of existing private property rights.

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