

**State of Wisconsin
Labor and Industry Review Commission**

Gabriel Sauers
Complainant

Village of Prairie du Sac
Respondent

ERD Case No. CR201802285

Public Accommodation Decision¹

Dated and Mailed:

September 27, 2019
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The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

David B. Falstad, Commissioner

/s/

Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the pink enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent discriminated against him based upon disability, in violation of the Wisconsin Public Accommodation and Amusement Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development issued a decision dismissing the complaint for lack of jurisdiction. The complainant has filed a timely petition for commission review.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was available to the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

In his discrimination complaint, the complainant alleged that the village administrator² refused to meet with him regarding an incident involving a village employee and, further, that the village administrator refused an accommodation request. Specifically, the complainant contends that he asked the village administrator to meet with him and to allow his father to be present by telephone, an accommodation he required because of anxiety. The complainant contends that the village administrator never responded to this request and that this amounted to the denial of the full and equal enjoyment of a place of public accommodation, within the meaning of the Act.

The administrative law judge found that the Equal Rights Division lacks jurisdiction over the complainant's complaint, and the commission agrees.

For purposes of the Act, a "public place of accommodation or amusement"

shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber, cosmetologist, aesthetician; electrologist, or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods, or services are available either free or for a consideration. . .

Wisconsin Stat. § 106.52(1)(e)1.

By adopting the above-cited language the legislature did not intend to subject every place of business where goods or services are provided to the provisions of the Act. Rather, in order to be a place of public accommodation under the Act, the business

² In the complaint document the complainant used the term "city manager." However, subsequent correspondence from the parties clarifies that the proper title is "village administrator."

must be comparable to or consistent with the businesses listed in the statute itself. *Hatheway v. Gannett Satellite Network*, 157 Wis. 2d 395, 400-401, 459 N.W.2d 873 (Ct. App. 1990). As a general rule, governmental agencies do not meet that standard. For example, a sheriff's department does not supply necessities and/or comforts of the kind offered by the businesses identified by the statute and does not constitute a place of public accommodation. *Perry v. Rock Co. Sheriff's Department*, ERD Case No. 199701305 (LIRC June 25, 1997). Similarly, a complaint regarding the City Clerk's office is not covered by the Act, since the City Clerk's office does not operate in order to provide goods or services to individuals. *Moore v. City of Madison*, ERD Case No. CR200100980 (LIRC Sept. 26, 2002). While in a later decision the commission clarified that it is not out of the question that a government agency/entity could be subject to coverage under the Act, this would only be the case where the government entity supplies necessities and/or comforts of the kind offered by the businesses enumerated in the statute. For example, coverage might be found with respect to the Department of Natural Resources, which provides places for outdoor recreation, or against a hospital or nursing home operated by the government. See, *Duarte-Vestar v. Department of Administration*, ERD Case No. CR200804400 (LIRC Oct. 16, 2009). That said, in *Duarte-Vestar*, the commission noted that the primary function of the Department of Administration, the agency against whom the complaint was filed, is to provide support services to other state agencies and that, as such, the Department of Administration is not comparable or consistent with the places of business enumerated in the statute. Therefore, no coverage was found under the Act.

The respondent in the instant case is the Village of Prairie du Sac, a unit of municipal government. While it is conceivable that the respondent provides some of the types of necessities and comforts enumerated in the statute, its primary function is not to provide public accommodations or amusements, and it is not comparable to the places of business referenced in the Act. Further, the complainant's complaint was based upon the actions of the village administrator with respect to handling a citation issued to the complainant, and there is no allegation that the complainant was denied access to or equal enjoyment of an amusement or accommodation of the type referenced in the statute. Because the commission agrees with the administrative law judge that the complainant's complaint is not covered by the Wisconsin Public Accommodation and Amusement Act, the dismissal of the complaint is affirmed.

cc: Attorney Ted Waskowski