

State of Wisconsin



Labor and Industry Review Commission

Valerie Kreger, Complainant

Public Accommodation Decision¹

Girl Scouts of Wisconsin Badgerland
Council, Respondent

Dated and Mailed:

ERD Case No. CR201903076

September 11, 2020

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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 her and her daughter in violation of the Wisconsin Public Accommodations and Amusements Law. 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 of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was before 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 her petition for commission review the complainant argues, without explanation or elaboration, that she disagrees with the administrative law judge's decision. However, based upon its independent review, the commission is satisfied that the administrative law judge arrived at the correct decision.

The statute makes it unlawful to deny to another the full and equal enjoyment of a public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry. The law anticipates that it is those who operate public places of accommodation or amusement who will be respondents when complaints are filed. *Young v. WEAU-TV*, ERD Case No. CR200603580 (LIRC May 18, 2007). "Wisconsin's public accommodation law protects access to *places*." *Barry v. Maple Bluff Country Club*, 221 Wis. 2d 707, 716, 586 N.W.2d 182 (Ct. App. 1998)(emphasis in original).² The named respondent in this case, Girl Scouts of Wisconsin Badgerland Council, does not operate a public place of accommodation or amusement. The fact that the Girl Scout troop to which the complainant's daughter belonged meets in a public school building does not change this analysis. The Girl Scouts do not operate a school, and the complainant's complaint, which alleges that the Girl Scout troop subjected her and her daughter to a disparate set of rules pertaining to personal conduct, is not related to the use of school facilities.

Moreover, as the administrative law judge noted in her decision, private non-profit organizations are outside the scope of the public accommodations statute when they are providing accommodations, amusements, goods or services to members of the organization or their guests. Wis. Stat. § 106.52(1)(e)2.; *Barry v. Maple Bluff Country Club*, 244 Wis. 2d 86, 629 N.W.2d 24 (Ct. App. 2001). The Girl Scouts is a private,

² See, also, *Neldaughter v. Mound View Cheese*, ERD Hearing No. 8900539 (LIRC July 31, 1991)("The statute relates specifically, and repeatedly, to "places," or physical locations where goods and services are provided. The right to be on a softball team is not a "place").

non-profit organization that, pursuant to the allegations in the complaint, was providing services to the complainant's daughter (a member) and to the complainant (a guest). Thus, the Girls Scouts appear to fall within the exception contained in Wis. Stat. § 106.52(1)(e)2.

For the reasons set forth above, the commission agrees with the administrative law judge that the respondent in this case is not a public place of accommodation or amusement and is not covered by the Public Accommodations and Amusements Law. Accordingly, the dismissal of the complaint is affirmed.

cc: Kathy Busse