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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 22, 1999

Homer C. Floyd, Executive Director
Pennsylvania Human Relations Commission
101 South Second Street, Suite 300
Harrisburg, PA 17101

Re: IRRC Regulation #52-010 (#2045)
Pennsylvania Human Relations Commission
Housing Accommodations/Commercial Property

Dear Mr. Floyd:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Mary Lou Harris at 772-1284.

Sincerely,

Robert E. Nyce
Executive Director

REN:wbg
Enclosure
cc: Nancy Gippert
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

**THE PENNSYLVANIA HUMAN RELATIONS COMMISSION
REGULATION NO. 52-10**

HOUSING ACCOMODATIONS/COMMERCIAL PROPERTY

OCTOBER 22, 1999

We have reviewed this proposed regulation from the Pennsylvania Human Relations Commission (PHRC) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ in determining whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to consistency with statute, reasonableness, need and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 45.171. Race/Color/National Origin. - Reasonableness and Clarity.

Paragraph (3) states that it is unlawful to advertise “[L]andmarks or organizational locations which are indicative of a particular nationality or race, unless all of the landmarks in the area are noted.” Does this section prohibit a reference to a property located in an area recognized as a community landmark, e.g., “Chinatown” or “Little Italy”? The PHRC should clarify this in the final-form rulemaking.

Also, can ethnic terms be used to describe a property’s unique features (e.g., Oriental garden, Kosher restaurant)? For clarity, the final-form regulation should specify whether this type of description is prohibited.

The term “code words” in Paragraph (4) is vague. We understand that “code words” are local terms, phrases and euphemisms that describe specific neighborhoods which are primarily populated by a certain ethnic group. The PHRC should define or explain this term within this section.

2. Section 45.172. Familial status/age. - Clarity.

There appears to be a typographical error in Subsection (a)(3). The word “The” which appears before “listing” should be deleted.

3. Section 45.181. List. - Need and Clarity.

This section describes the purpose and general scope of the list of words to be avoided in housing advertisements. The language contained in this section is nonregulatory in that it provides guidance rather than regulatory requirements. The PHRC should revise this section to

be written in the form of regulatory requirements. Alternatively, the PHRC could move the purpose description language to Section 45.161. *Purpose.*

4. Section 45.182. Words to be avoided. - Clarity.

Subsection (a) contains the statement: "The list is neither intended nor reasonably able to be all inclusive." This sentence repeats information included in Section 45.181 and should be deleted.

Also, the explanatory language after "Retired persons, retirees" and "Senior" is confusing. To improve clarity, this language should mirror the structure of the explanatory language that follows the word "Adult."

5. Section 45.191. Advertisements. - Clarity.

It is our understanding that advertisements in Pennsylvania newspapers for property located out-of-state are covered under this rulemaking. If so, the regulation should be clarified by adding a provision that the requirements of this chapter apply regardless of where the property is located.

6. Section 45.192. Affirmative defenses. - Clarity.

The term "housing advertiser" should be replaced with "advertiser," since this is the defined term.

Paragraph (2) provides that it is an affirmative defense that a housing advertiser has complied with a written advisory of the Commission concerning what constitutes appropriate housing advertisements. A provision should be added outlining the process by which an advisory is requested and received, including any applicable time frame.

7. Section 45.193. Good faith efforts. - Clarity.

Paragraph (1) references the housing for older persons exemption. To improve clarity, the PHRC should include a cross-reference to the Federal Fair Housing Act (42 U.S.C.A. 3607(b)).

Paragraph (3) provides that an advertiser will be deemed to have acted in good faith if the advertiser produces a written Commission advisory that the language complained of is legal. As noted in **Comment #6**, a provision should be added outlining or referencing the process by which an advisory is requested and received, including any applicable time frame.

8. Obsolete provisions in existing regulation. - Consistency with Statute.

Act 34 of 1997 nullified Sections 45.8(a) (relating to advertisements) and 45.13(f) (relating to exemptions) of the existing PHRC regulations. Why were those two sections not deleted in the proposed rulemaking? For consistency with the Act 34 amendments, the PHRC should delete both sections in the final-form regulation.