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ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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 #52-011 (#2055)
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:cae
Enclosure
cc: Nancy L. Gippert
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

**PENNSYLVANIA HUMAN RELATIONS COMMISSION
REGULATION NO. 52-11**

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 reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 45.301. Purpose. – Clarity.

This section includes, verbatim, the statutory language from 43 P.S. Section 955(h)(5). Is it necessary to include the entire statutory text of the subsection in this section? The PHRC should consider, instead, cross-referencing 43 P.S. Section 955(h)(5).

2. Section 45.302. Initial procedure. – Reasonableness and Clarity.

Paragraphs (1) and (2)

In Paragraphs (1) and (2), “advertisements shall be forwarded to,” and “Commission Citation Forms shall be completed by” the “appropriate housing staff(s).” The process described in these paragraphs does not need to be codified. This information would be more appropriately included in the PHRC’s internal operations manual.

Paragraph (1) requires, when possible, “information regarding the advertisement’s publication.” What does this information include? The PHRC should clearly state what information is needed.

Paragraph (3)

How long after the PHRC becomes aware of an advertisement will a copy of the citation be sent to the parties cited in Paragraph (3)? For clarity, the PHRC should specify a time frame within which it will respond by sending a copy of the citation to the affected party.

What is the “appropriate penalty” included in Subsection (3)(iii)? For clarity, the PHRC should cross-reference the “Schedule of civil penalties” in Section 45.307 in this paragraph.

Paragraphs (3) and (4)

What is the difference between “service of the citation” in Paragraph (4) and the Paragraph (3) reference to citations being “sent”? For improved clarity, both paragraphs should

reference service of the citation. Also, 1 Pa. Code Section 33.34 should be cross-referenced to reflect that the date of service is the date of mailing.

Paragraph (5)

Paragraph (5) states: “[F]ailure to pay a civil penalty could result in...other disciplinary actions against licensees....” For clarity, the PHRC should cross-reference where these other actions, including court proceedings, that are deemed appropriate disciplinary actions in this paragraph, are found. Further, will the final regulation specify the additional penalties that would result from a failure to pay the civil penalty required in Paragraph (5)?

3. Section 45.303. Administrative procedures. – Clarity.

Subsections (a) and (b)

Subsection (a) provides that all responses to citations shall be recorded in the “appropriate data base.” Subsections (b)(1) and (b)(2) require the PHRC to process and forward checks when violations are admitted and other violations are denied. This information is more appropriately placed in an internal operations manual.

Subsections (c) and (d)

Subsection (c)(1) states “[T]he fact shall be noted in the record.” Subsection (d)(1) states “[T]he record shall note the denial.” Is there a reason why these two sentences are written differently? If not, the PHRC should consider parallel construction for these two sentences.

We also question the use of the terms “citation officer” in this section and “hearing officer” in Section 45.308 (relating to the Citation form). It is our understanding that these two positions are identical. For clarity and consistency, the PHRC should define one of these terms in this subsection, and use that defined term consistently throughout the regulation.

Subsection (f)

What are the “appropriate PHRC regulations/requirements”? Is “requirement” another term for “regulation”? If so, it should be deleted.

Are there “appropriate” regulations beyond those found in this rulemaking? If so, they should be explained or cross-referenced.

Subsection (g)

Subsection (g) provides that all payments made as a result of a violation will be forwarded to the Department of Revenue. Once again, we question whether this information would be more appropriately included in an internal operations manual.

4. Section 45.304. Hearing. – Clarity.

Will hearings under this section and the section on appeals (Section 45.305) be administered in accordance with 16 Pa. Code Chapter 42 of the PHRC’s Special Rules of Administrative Practice and Procedure? It is our understanding that they will be. Applicable rules should be included and cross-referenced in the final-form regulation.

Subsection (a)(5) provides that following a hearing, the citation officer may “order other appropriate equitable relief as authorized by the act.” The final-form regulation should explain what this means, including appropriate cross-references to other applicable provisions.

Subsection (b) states: “[O]rders affirming two or more violations shall be referred to appropriate licensing or regulating agencies for action as they deem appropriate.” The final-form regulation should include a provision that the party who is the subject of those referrals will be provided with a copy of all referral notices.

5. Section 45.305. Appeals. – Clarity.

As noted in **Comment #4**, all rules applicable to this section should be identified and cross-referenced in the final-form regulation. This section should also clarify the nature of the appeal hearing (i.e., is it a hearing *de novo* or a reconsideration?). Finally, it should specify the extent to which additional evidence may be considered.

6. Section 45.307. Schedule of civil penalties. – Clarity.

This section provides that if an unlawful advertisement is placed again in a newspaper or other publication, or is not withdrawn reasonably upon service of citation, it may be cited a second time. The clarity of the first clause would be improved if it included a reference to “following receipt of a citation” after the word “publication.”

In Subsection (b), the PHRC should further explain what it means by “formal process.” Does it mean a formal complaint procedure? If so, this section should include a citation to the PHRC’s Chapter 42 procedural rules.

Similarly, the phrase “to impose a maximum penalty on a multiple basis” in Subsection (b)(1) should be clarified. Section 9.3 of Act 34 of 1997 (43 P.S. § 959.3) states: “[A]ny such penalty shall not exceed the sum of five hundred dollars (\$500).” Given this limitation, Subsection (b)(1) should clearly indicate that it applies to multiple offenses, not multiple penalties which may exceed \$500 for one offense.

7. Section 45.308. Form. – Clarity.

The instructions accompanying the form provide that all hearings are held in Harrisburg at the PHRC’s conference room. We understand it is the PHRC’s intent to hold hearings at the PHRC’s offices in or nearest to the region where the transgression occurred or the alleged violator is located. If the PHRC plans to hold hearings regionally, the final-form regulation and the Citation form instructions should be amended accordingly.

Additionally, the following inconsistencies on the “Citation” form should be corrected:

- 1) The instructions refer to a hearing before a “hearing officer.” Use either “citation officer” or “hearing officer” consistently throughout the regulation (see **Comment #3**).
- 2) The word “too” in the verification language should be changed to “to.”
- 3) Under “Notice of Rights and Obligations,” Subsection 2(b)(i) includes the language “at the address listed specified above.” Either the word “listed” or the word “specified” should be deleted.