

THE OTHER SIDE OF THE TRACKS

A Handbook on Nondiscrimination in Municipal Services



United States Commission on Civil Rights
Clearinghouse Publication 49
September 1974

UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

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INTRODUCTION

At an earlier period in American life, "the other side of the tracks" meant that part of town beyond the railroad, usually occupied by blacks and others who daily confronted the oppression of discrimination. It was an area ignored by city officials and the townspeople they represented.

Today "the other side of the tracks" is often a ghetto, its residents denied the municipal services to which they are entitled, its boundaries marked not by railroad tracks but by freeways over which suburbanites drive to and from their city jobs.

Recently, however, Federal courts have said that residents of "the other side of the tracks" should get the same municipal services as anyone living in the richer parts of town.

This booklet tells community residents and community leaders what kind of discrimination is unlawful when municipal services are provided. It explains how to file a complaint, where to seek help in complaining, and to whom the complaint should be sent. It is offered in the belief that citizens who know their rights and know how to get them can help fight discrimination and get municipal services which are theirs by right.

MUNICIPAL SERVICES

Municipal services are services provided by localities—cities, towns, villages, counties, or special districts—to meet the needs and wants of their residents. These services aim to promote the health, welfare, comfort, and pleasure of the people who live within a particular city, town, county, or village. Municipal services include such things as:

- street paving.
- street lights.
- sanitary sewers.
- drainage sewers.
- water mains.
- fire hydrants.
- traffic control signs and traffic lights.
- garbage and trash collection.
- parks and recreational facilities.
- police patrols.
- fire protection.
- libraries and bookmobiles.
- transportation (bus routes and bus stops).
- hospitals, ambulances, and other medical care facilities.
- legal aid.

Municipalities are generally not constitutionally required to provide these services to their residents. Once services are provided, however, the services cannot be provided to some citizens and not to others. For example, if a municipality paves streets in white neighborhoods, it must do the same in black neighborhoods.

In other words, counties, cities, towns, villages, and special districts cannot discriminate against blacks, Chicanos, Puerto Ricans, Indians, or any other racial or ethnic group in the provision of municipal services. This is because the 14th amendment to the United States Constitution, as well as the new revenue sharing law, forbids such discrimination. Many State constitutions and laws also forbid it. The revenue sharing law also prohibits sex discrimination.

The law in this area¹ may be summarized in three general statements:

1. *Great* gaps or differences in the provision of municipal services on the basis of race² establish a presumption (strong suspicion) of racial discrimination, at least where there is a long history of past discrimination. Once such a history is shown, recent change of policy by the locality is not a defense.³

2. The fact that these gaps or differences may not have been intentional doesn't matter; actual intent or discriminatory motive need not be proved directly.

3. A locality found to have discriminated against its residents on the basis of race in providing municipal services must cure the gaps or differences.

In several States, blacks, Indians, and Puerto Ricans have sued their cities, counties, towns, and villages to stop discrimination in the provision of municipal services. A lawsuit filed by an Indian resident of Winner, South Dakota, prompted that city to improve some of its municipal services in "Indian town," where almost three-fourths of the residents were Indian.⁴

In the best known court suit in this area of the law, black residents of Shaw, Mississippi, got improvements in street paving, sanitary sewers, street lights, drainage sewers, water mains, fire hydrants, and traffic control signs.⁵ Shaw was ordered by the court to develop a plan to provide equal services to its black and white neighborhoods,⁶ at a cost to the city of several million dollars.

HOW TO COMPLAIN

Any individual, group of individuals, or community which believes it has been discriminated against in the provision of municipal services because of race, ethnicity, or national origin should file a complaint to remedy the discrimination and equalize the municipal services. Complaints should be made in writing to the appropriate local, State, or Federal authority. (These names and addresses are listed in the next section of this booklet.)

The complainant does not have to prove the discrimination, but may complain if he or she merely believes that discrimination exists.

The complaint is a formal notification of alleged discrimination. It should include as much of the following as possible:

- name, address, and phone number of the complainant;
- name and address of the county, city, town, or village against which the complaint is made;
- name of the authority to whom the complaint is made;
- a request that the complaint be considered a formal complaint of discrimination;
- an explanation of the type of discrimination (race, ethnicity, national origin) and the municipal services which are being denied (street paving, sanitary sewers, etc.);
- the length of time during which the municipality has practiced discrimination;
- a request that an investigation be made;
- a request that the offending municipality be required to provide its services equally, in quantity and quality, to all its residents;
- a request that if the authority to whom the complaint is made cannot provide relief, the complaint be forwarded to an authority which can do so; and
- the signature of the complainant and the date.

The complainant should keep a dated copy of the complaint.

WHERE TO COMPLAIN

Local Government

Municipal services are usually locally controlled and locally funded. The first complaint, therefore, can be filed with:

- director of the service involved (e.g., the fire chief, the director of the sewage treatment plant, the public works director, etc.).
- the county, city, town, or village manager.
- the mayor.
- the county, city, town, or village council or commission.
- some other representative of local government.

State Government

If a complaint doesn't get satisfactory results at the local level and municipal services remain unequal, it may then be filed on the State government level. Municipal services may be partially funded by the State government and may be under the jurisdiction of a State agency or department which can influence local policy. The appropriate State organizations are listed alphabetically by State:

Alabama

Governor
State Capitol
Montgomery, Ala. 36104
(205) 269-7642

Alaska

Alaska State Commission for
Human Rights
2457 Arctic Blvd., Suite 3
Anchorage, Alaska 99503
(907) 274-4692

Arizona

Governor
1700 West Washington
Phoenix, Ariz. 85007
(602) 271-4331

Arkansas

Governor
250 State Capitol Building
Little Rock, Ark. 72201
(501) 371-2133

California

Governor
State Capitol
Sacramento, Calif. 95814
(916) 445-4711

Colorado

Director
Colorado Civil Rights
Commission
312 State Services Bldg.
1525 Sherman St.
Denver, Colo. 80203
(303) 892-2621

Connecticut

Executive Director
Connecticut Commission on
Human Rights and
Opportunities
90 Washington St.
Hartford, Conn. 06106
(203) 566-3351

Delaware
Governor
1228 North Scott St.
Wilmington, Del. 19901
(302) 571-3210

District of Columbia
Director
Executive Office
Office of Human Rights
Room 22, District Bldg.
14th and E Sts., N.W.
Washington, D.C. 20004
(202) 629-4723

Florida
Director
Florida Commission on Human
Relations
2571 Executive Center
Circle East
Tallahassee, Fla. 32301
(904) 488-8466

Georgia
Coordinator
Governor's Council on Human
Relations
Room 249, State Capitol
Atlanta, Ga. 30334
(404) 656-1736

Hawaii
Governor
State Capitol
Honolulu, Hawaii 96813
(808) 548-2211

Idaho
Director
Idaho Commission on Human
Rights
506 North Fifth St.
Boise, Idaho 83702
(208) 384-2873

Illinois
Executive Director
Illinois Commission on Human
Relations
160 North LaSalle St.
Chicago, Ill. 60601
(312) 793-2893

Indiana
Director
Indiana Civil Rights
Commission
319 State Office Bldg.
Indianapolis, Ind. 46204
(317) 633-5741 or 633-4855

Iowa
Director
Citizens Aide Office
515 East 12th St.
Des Moines, Iowa 50319
(515) 281-3592

Kansas
Executive Director
Kansas Commission on Civil
Rights
115W State Office Bldg.
Topeka, Kans. 66612
(913) 296-3206

Kentucky
Executive Director
Kentucky Commission on
Human Rights
701 West Walnut St.
Louisville, Ky. 40203
(502) 585-3363

Louisiana
Executive Director
Louisiana Commission on
Human Relations, Rights,
and Responsibilities
State Office Bldg.
150 Riverside Mall, Suite 402
Baton Rouge, La. 70801
(504) 389-6136

Maine

Executive Secretary
Maine Human Rights
Commission
State House
Augusta, Maine 04330
(207) 289-2326

Maryland

Executive Director
Maryland Commission on
Human Relations
701 St. Paul St., 5th Floor
Baltimore, Md. 21202
(301) 383-3686

Massachusetts

Governor
State House
Boston, Mass. 02133
(617) 727-3600

Michigan

Case Supervisor, Intake Division
Michigan Department of Civil
Rights
1200 Sixth St., 5th Floor
Executive Plaza Bldg.
Detroit, Mich. 48226
(313) 256-2663

Minnesota

Commissioner
Minnesota State Department of
Human Rights
200 Capital Square Bldg.
550 Cedar St.
St. Paul, Minn. 55101
(612) 296-5663

Mississippi

Governor
New Capitol Bldg.
Jackson, Miss. 39201
(601) 354-7575

Missouri

Executive Director
Missouri Commission on Human
Rights
P.O. Box 1129
314 East High St.
Jefferson City, Mo. 65101
(314) 751-2151

Montana

Bureau Chief
Montana Department of Labor
and Industry
Division of Labor Standards,
Human Rights Bureau
1434 Roberts
Helena, Mont. 59601
(406) 449-3472

Nebraska

Nebraska Equal Opportunity
Commission
233 South 14th St.
Lincoln, Nebr. 68509
(402) 471-2024

Nevada

Executive Director
Nevada Commission on Equal
Rights of Citizens
P.O. Box 791
Las Vegas, Nev. 89101
(702) 385-0104

New Hampshire

Governor
State House
Concord, N.H. 03301
(603) 271-1110

New Jersey

Director
New Jersey Division on
Civil Rights
Department of Law and Public
Safety
1100 Raymond Blvd.
Newark, N.J. 07102
(201) 648-2700

New Mexico

Administrative Assistant
Governor's Office
State Capitol Bldg.
Santa Fe, N. Mex. 87501
(505) 827-2221

New York

Governor
State Capitol
Albany, N. Y. 12224
(518) 474-7453

North Carolina

North Carolina Human
Relations Commission
P.O. Box 12525
Raleigh, N. C. 27605
(919) 829-7996 or 829-3354

North Dakota

Information and Research
Assistant
Governor's Office
State Capitol
Bismarck, N. Dak. 58501
(701) 224-2200

Ohio

Executive Assistant
The Governor's State House
Columbus, Ohio 43215
(614) 466-3526

Oklahoma

Administrative Assistant
Governor's Office
State Capitol Bldg.
Oklahoma City, Okla. 73105
1-800-522-3741 (toll free)

Oregon

Office of Ombudsman
Governor's Office
209 State Capitol Bldg.
Salem, Oreg. 97310
(503) 378-3123

Pennsylvania

Executive Director
Pennsylvania Human Relations
Commission
100 North Cameron St.,
2d Floor
Harrisburg, Pa. 17101
(717) 787-4410

Field Offices:**Harrisburg and surrounding areas:**

301 Muench St.
Harrisburg, Pa. 17102
(717) 787-9780

Pittsburgh and surrounding areas

4 Smithfield St., Room 810
Pittsburgh, Pa. 15222
(412) 565-5395

Philadelphia and surrounding areas

101 State Office Bldg.
Broad and Spring Garden Sts.
Philadelphia, Pa. 19130
(215) 238-6940

Rhode Island

Executive Secretary
State Commission for Human
Rights
244 Broad St.
Providence, R. I. 02903
(401) 277-2661

South Carolina

Office of Citizen Services
Office of the Governor
State House
Columbia, S. C. 29211
(803) 758-3324

South Dakota
Director
Division of Human Rights
Department of Commerce and
Consumer Affairs
State Capitol
Pierre, S. Dak. 57501
(605) 224-3692

Tennessee
Executive Secretary
Tennessee Commission for
Human Development
C3-305 Cordell Hull Bldg.
Nashville, Tenn. 37219
(615) 741-2424

Texas
Governor
Capitol Station
Austin, Tex. 78711
(512) 475-4101

Utah
Executive Director
Department of Community
Affairs
210 State Capitol
Salt Lake City, Utah 84114
(801) 328-5236

Vermont
Governor
State House
Montpelier, Vt. 05602
(802) 828-3333

Virginia
Citizens Service Assistance
Office
825 East Broad St.
Richmond, Va. 23219
1-800-552-9963 (toll free)

Washington
Human Rights Commission
402 Evergreen Plaza Bldg.
Seventh and Capitol Way
Olympia, Wash. 98504
(206) 753-6770

West Virginia
Field Representative
West Virginia Human Rights
Commission
1591 Washington Street East
Charleston, W. Va. 25305
(304) 348-2616

Wisconsin
Information and Referral
Project
55 North Dickinson, Room 166
Madison, Wis. 53703
(608) 266-2859

Wyoming
Administrative Assistant
Governor's Office
State Capitol Bldg.
Cheyenne, Wyo. 82201
(307) 777-7434

Federal Government

If satisfactory results on either the local or State government level are not obtained and municipal services remain unequally distributed, a complaint may be filed at the Federal Government level. Municipal services may be, in part, federally funded and may be under the jurisdiction of a Federal agency or department which can influence local policy. It is against the law for Federal funds to be used in programs and services which discriminate on the basis of race, ethnicity, or national origin.⁷ If Federal funds are involved, it is the obligation of the Federal agency providing the funds to see that there is no discrimination in the administration of programs and services.

Federal agencies and departments that may have jurisdiction over municipal services are listed below, by name and by the service over which each may have responsibility:

ALL MUNICIPAL SERVICES:

Department of the Treasury
Director, Office of Revenue Sharing
15th St. and Pennsylvania Ave., N.W.
Washington, D.C. 20220

HOUSING, CITY PLANNING, HOSPITALS, WASTE DISPOSAL, UTILITIES:

Department of Housing and Urban Development
451 Seventh St., S.W.
Washington, D.C. 20410

HEALTH PROGRAMS, LIBRARIES:

Department of Health, Education, and Welfare
Director, Office for Civil Rights
330 Independence Ave., S.W.
Washington, D.C. 20201

POLICE PROTECTION, STREET LIGHTING:

Department of Justice
Law Enforcement Assistance Administration
Administrator
633 Indiana Ave., N.W.
Washington, D.C. 20530

UTILITIES:

Department of the Interior
C Street between 18th and 19th Sts., N.W.
Washington, D.C. 20240

PARKS:

Department of the Interior
Bureau of Outdoor Recreation
C Street between 18th and 19th Sts., N.W.
Washington, D.C. 20240

PROGRAMS AND SERVICES ON INDIAN LANDS:

Bureau of Indian Affairs
1951 Constitution Ave., N.W.
Washington, D.C. 20245

MASS TRANSIT (BUS AND RAIL):

Department of Transportation
Urban Mass Transportation Administration
400 Seventh St., S.W.
Washington, D.C. 20591

STREETS AND HIGHWAYS:

Department of Transportation
Federal Highway Administration
400 Seventh St., S.W.
Washington, D.C. 20591

WASTE DISPOSAL:

Environmental Protection Agency
Division of Civil Rights and Urban Affairs
401 M St., S.W.
Washington, D.C. 20460

UTILITIES:

Federal Power Commission
825 North Capitol St., N.E.
Washington, D.C. 20426

PUBLIC WORKS:

Department of Commerce
Economic Development Administration
14th St. between Constitution Ave. and E St., N.W.
Washington, D.C. 20320

FACILITIES AND SERVICES IN RURAL AREAS, RURAL POWER COMPANIES, RURAL TELEPHONE COMPANIES:

Department of Agriculture
14th St. and Independence Ave., S.W.
Washington, D.C. 20250

UTILITIES (FOR ALABAMA, KENTUCKY, TENNESSEE, GEORGIA, NORTH CAROLINA, VIRGINIA, MISSISSIPPI ONLY):

Tennessee Valley Authority
Woodward Bldg.
15th and H Sts., N.W.
Washington, D.C. 20444

WHERE TO SEEK LEGAL HELP

To handle the complicated issues involved and to avoid delay, it may be wise to get legal assistance. Legal associations which may be of assistance are:

NAACP Legal Defense and Educational Fund, Inc.

10 Columbus Circle
New York, N.Y. 10019
(212) 586-8397

The NAACP Legal Defense and Educational Fund has had considerable legal experience, including major lawsuits, regarding municipal services. It has published a very useful manual called "Litigation for Equalization of Municipal Services."

Lawyers' Committee for Civil Rights Under Law

Director, Revenue Sharing Project

733 15th St., N.W., Suite 520
Washington, D.C. 20005
(202) 628-6700

The Committee monitors the use of Federal funds by State and local authorities and initiates judicial and administrative suits where those funds are used in the discriminatory provision of municipal services.

American Civil Liberties Union

20 East 40th St.
New York, N.Y. 10016
(212) 725-1222

The ACLU has local affiliates throughout the United States. If you cannot locate a local ACLU chapter, contact the National Office for assistance.

National Lawyers Guild

23 Cornelia Street
New York, N.Y. 10014
(212) 255-8028

This office will refer you to the Guild office or attorney nearest you.

National Bar Association

c/o Elmer C. Jackson, Jr.
1314 North 5th St.
Kansas City, Kans. 66101
(913) 281-4583

National Association for Puerto Rican Civil Rights

175 East 116th St.
New York, N.Y. 10029
(212) 348-3973

**American Indian Law Center
University of New Mexico Law School**

1915 Roma Ave., N.E.
Albuquerque, N. Mex. 87106
(505) 277-4844

The center will refer you to a law office or attorney who can handle a municipal services case.

Native American Rights Fund

1506 Broadway
Boulder, Colo. 80302
(303) 477-8760

Mexican American Legal Defense and Education Fund

145 Ninth St.
San Francisco, Calif. 94103
(415) 626-6196

In addition, in many communities there are law offices known as Legal Aid, Neighborhood Legal Services, or Neighborhood Law Office which may be of assistance. If you have trouble locating such an office, contact the State office of the American Bar Association and ask for the address and phone number of the Legal Aid office nearest you.

NOTES

¹ This summary is drawn from the holdings in two cases, *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971) *aff'd en banc*, 461 F.2d 1171 (1972), and *Beal v. Lindsay*, 468 F.2d 287 (2d Cir. 1972), commented on in 51 Texas L. Rev. 1247 (1973). Both cases are discussed *infra*, notes 5 and 6 and accompanying text.

² The importance of an allegation of discrimination on the basis of race or ethnicity, rather than wealth, emerged from the Supreme Court's holding in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). In *Rodriguez*, the Court stated that a finding of an equal protection violation due to discrimination on the basis of wealth alone requires a complete inability to pay for and an "absolute deprivation of a meaningful opportunity to enjoy" a benefit. *Id.* at 20. Thus, the provision to indigent residents of a locality of some level of municipal services, though a level unequal to that provided the nonindigent, might not constitute a denial of equal protection. In addition, the Court erected several obstacles to the identification of indigent classes. *Rodriguez* did not, however, alter the Court's traditional view of race as a suspect classification, to be closely scrutinized for a violation of the equal protection guarantee. Therefore, suits alleging discrimination on the basis of race (i.e., where the area deprived of equal municipal services has a predominantly minority population) should still fare well. *See Beal v. Lindsay*, *supra* note 1.

³ *See Selmont Improvement Assoc. v. Dallas County Comm'n*, 339 F. Supp. 477, 481 (S.D. Ala. 1972).

⁴ In *Fire v. City of Winner*, 352 F. Supp. 925 (D. S. Dak. 1972), plaintiff alleged discrimination against Indians in the provision of drainage systems, street improvements, sewage facilities, fire hydrants, street lights, and sidewalks. After commencement of the suit, *Winner* improved some of these services, which mooted the discrimination suit as to them. As to several uncorrected deficiencies, i.e., street paving, sidewalks, and sewage facilities, the court found: (1) that they were "reasonable attributes" of property ownership for which the owner must be specifically assessed, *Id.* at 928; and (2) that because 98 percent of the inhabitants in the deprived area rented their homes, relief existed in another court and "may involve the owners of the property and lack of diligence on the part of landlords to comply with the building code." *Id.* Finally, the court stated that "when a city recognizes

a disparity in providing services to its residents and makes a good faith effort to correct such disparity, as was done in this case, then the municipality has met its constitutional responsibility. The equal protection clause was never intended to be a constitutional command forcing municipalities to assume the responsibilities of landowners for the development of their lands." *Id.*

⁵ *Hawkins v. Town of Shaw*, *supra* note 1. Great disparities in the provision of municipal services to black and white neighborhoods in Shaw formed the basis of a 42 U.S.C. § 1983 class action to restrain Shaw from discriminating on the basis of race in the provision of those services. It is important to emphasize the grossness of the disparities: 98 percent of all homes fronting on unpaved streets were occupied by blacks; 97 percent of all homes not served by sanitary sewers were in black neighborhoods; none of the new highpower mercury vapor street lights were installed in black neighborhoods; blacks were provided with a poorly maintained system of drainage ditches, and, on many streets, none at all, while whites were provided with underground storm sewers or a continuous system of drainage ditches. The Court of Appeals for the Fifth Circuit found that this statistical evidence, in the context of a long history of discrimination by Shaw against blacks, established a prima facie case of racial discrimination. The fact that Shaw may not have intended to discriminate against its black residents was irrelevant; actual intent or motive did not need to be proved directly. Since there was no compelling State interest to justify the disparities, the court ordered Shaw to submit to a lower court a plan—for approval—detailing how the town proposed to cure them. *See also*, *Davis v. City of Sanford*, Civ. No. 70-172 (M.D. Fla. 1974) (court approved plan for paving and drainage of streets); *Harris v. Town of Itta Bena*, Civ. No. GC67-56-S (N.D. Miss. 1973) (consent decree entered requiring approximately \$500,000 worth of improvements in black community); *Selmont Improvement Assoc. v. Dallas County Comm'n*, *supra* note 3; *Fairfax County-Wide Citizens Comm. v. Fairfax County*, Civ. No. 336-71-A (E.D. Va. 1972) (dismissed after settlement requiring paving of streets).

⁶ Equality in results will be required unless forces beyond the control of the offending municipality prevent the achievement thereof. *Beal v. Lindsay*, *supra* note 1. In *Beal*, black and Puerto Rican residents of New York City, disgusted with the deterioration of the municipal park in their neighborhood, alleged that the poor

condition of the park was due to racial discrimination. The court refused to uphold this claim, because the city demonstrated that it had provided greater upkeep services for the park than for other of its parks. Vandals, and not the city, caused the park's deterioration. For a case in which improvements in a park and its recreational facilities were ordered, *see* *Hadnott v. City of Prattville*, 309 F. Supp. 967 (M.D. Ala. 1970).

⁷ 42 U.S.C. § 2000d.

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