

Comments of Edwards E. Merges on behalf of Apartment Owners Association regarding open housing legislation (December 11, 1961)

December 11, 1961

TO: HONORABLE CITY COUNCIL
CITY OF SEATTLE

SUMMARY OF REMARKS BY MR. EDWARDS E. MERGES, GENERAL COUNSEL FOR THE APARTMENT OPERATORS ASSOCIATION OF SEATTLE

GENTLEMEN:

At the request of the Apartment Operators Association, I have examined the proposed draft of the "Anti-discrimination Housing Ordinance," which is presently being submitted by the N.A.A.C.P. for your consideration. I would like to state at the very outset that my remarks are limited to the constitutionality and the feasibility of the City of Seattle enforcing such a proposed ordinance.

First, regarding the constitutionality, it should be remembered that the case of O'Meara v. the Washington State Board against discrimination, Volume 158, Washington Decisions, No. 27, page 791, is the latest work of our Supreme Court upon this subject. The decision holding the order of the Board against discrimination unconstitutional was based upon the fact that the statute under which the Board was operating was unconstitutional under the equal protection clause of the Fourteenth Amendment to the Federal Constitution. Simply stated, our Court said that the statute was unconstitutional because it singled out property owners who had F.H.A. loans upon the property as being covered by the statute. More simply stated, the rule therefore is that no one individual or class of individuals can be covered by any constitutional law or ordinance. The ordinance presently proposed for your consideration violates this proposition in its very essence, because it singles out real estate brokers, real estate salesmen, property owners and lending institutions. It is crystal clear that his ordinance is unconstitutional on the basis of the O'Meara case alone.

An equally serious problem arises in the enforcement of this proposed ordinance. Questions: Assuming that it is constitutional, how is it going to be enforced and who is going to enforce it? Obviously, the Prosecuting Attorney cannot enforce a City ordinance. Obviously, the Attorney General's office cannot enforce a City ordinance, and obviously, the Corporation Council's office cannot enforce this ordinance from a practical standpoint since they obviously do not have the required facilities. Investigators and additional personnel would be required by reason of the wide ramifications attendant upon proper enforcement, and even then it is apparent that the City is in no position to enforce such an ordinance. The State saw the necessity for setting up a State Board to consider civil rights matters but the ordinance does not provide for such a Board and it is doubtful if the City has power under its charter to create such a Board. Filing by the City of complaints in Court in the various situations that would undoubtedly arise would result in chaos.

Let us examine for a moment what would actually happen if the ordinance were passed. The first thing,

of course, would be a legal contest which could well go to the Supreme Court of the United States and cost the City taxpayers thousands of dollars. Meanwhile, unbiased legal opinion would be unanimously to the effect that the ordinance is unconstitutional and the City of Seattle would be placed in the position of trying to uphold an obviously unconstitutional law. The only possible enforcement agency would be the Police Department, which has all it can do at the present time, and incidentally, can we imagine anything more ludicrous than a police patrolman dropping by one of our banks to tell the Board of Directors that it will have to make a loan to some certain individual. I think that our consideration of this matter must have now brought us to the conclusion that anti-discrimination legislation is a matter which should be undertaken at the State and National level and certainly not at the Municipal level.

Respectfully submitted,
Edwards E. Merges

Citation: Edwards E. Merges statement, December 11, 1961. Comptroller File 244113. Comptroller Files, 1802-01. Seattle Municipal Archives.