



3

OFFICE OF THE  
CITY ATTORNEY

JAMES P. JACKSON  
CITY ATTORNEY

THEODORE H. KOBEY, JR.  
ASSISTANT CITY ATTORNEY

CITY OF SACRAMENTO  
CALIFORNIA

March 11, 1988

812 TENTH STREET  
SACRAMENTO, CA  
95814-2694

916-449-5346

DEPUTY CITY  
ATTORNEYS:  
SAMUEL L. JACKSON  
WILLIAM P. CARNAZZO  
LAWRENCE M. LUNARDINI  
GARLAND E. BURRELL, JR.  
DIANE B. BALTER  
RICHARD F. ANTOINE  
TAMARA MILLIGAN-HARMON  
RICHARD E. ARCHIBALD  
LINDA M. GONZALEZ

Law and Legislation Committee  
City Council Chambers  
Sacramento, California 95814

RE: An Ordinance Adding Chapter 76 to  
the Sacramento City Code, Prohibiting  
Discrimination by Clubs or Organizations  
which are Not Distinctly Private

Honorable Members in Session:

SUMMARY

This report presents a proposed ordinance prohibiting discrimination by clubs or organizations which are not distinctly private to accompany the report by the Human Rights/Fair Housing Commission which recommends expeditious enactment of such an ordinance.

BACKGROUND

The City Attorney's Office has prepared a proposed ordinance based upon Councilmember Shore's proposal, which was referred to the Human Rights/Fair Housing Commission for study.

The ordinance as set forth adopts the Commission's recommendation to apply the ordinance to clubs of 200 members or more.

The enforcement provisions of the proposal have been modified to make them consistent with other City ordinances concerning discrimination; i.e., primary responsibility for enforcement is placed upon aggrieved parties or persons or entities who will fairly or adequately represent the interest of the protected class.

RECOMMENDATION

The Human Rights/Fair Housing Commission recommends that the Law and Legislation Committee endorse expeditious Council enactment of the proposed ordinance.

Very truly yours,

JAMES P. JACKSON, City Attorney

By

DIANE B. BALTER  
DIANE B. BALTER  
Deputy City Attorney

Attachments

March 24, 1988  
All Districts

# ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE ADDING CHAPTER 76 TO  
THE SACRAMENTO CITY CODE, PROHIBITING  
DISCRIMINATION BY CLUBS OR ORGANIZATIONS  
WHICH ARE NOT DISTINCTLY PRIVATE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

## SECTION 1.

Chapter 76 is hereby added to the Sacramento City Code to read as follows:

DISCRIMINATION-CLUBS OR ORGANIZATIONS WHICH ARE NOT  
DISTINCTLY PRIVATE

### **Sec. 76.100 Findings and Purpose.**

After public hearing and receipt of testimony, the City Council finds and declares:

That a significant barrier to the advancement of women and minorities in the business and professional life of the City exists by virtue of the discriminatory practices of certain clubs or organizations which are not distinctly private and where business is frequently conducted.

That while such clubs or organizations may avowedly be formed for social or civic purposes, the extent to which many of the activities therein have had a prejudicial impact on the business, professional and employment opportunities of women and minorities cannot be ignored or minimized.

That business activity most frequently occurs in clubs or organizations having more than two hundred members which provide regular meal services which facilitates conducting such business.

That the dues and expenses of members at such clubs or organizations are often paid by their employers because the employee's activities at said clubs or organizations serve to develop and enhance the employer's business.

That such clubs or organizations also rent their facilities for use as conference rooms for business meetings attended by non-members.

That the City of Sacramento has a compelling interest in eradicating discrimination based on sex, race, color, religion, ancestry, national origin, handicap, or sexual orientation in order to assure all of its citizens a fair and equal opportunity to participate in the business and professional life of the City. Conduct and practices which exclude persons from entry or consideration for membership in or the full advantages and privileges of such membership on these bases are discriminatory and unacceptable, are injurious to the body politic and to the business community in the City of Sacramento. Accordingly, the City's interest in eliminating such practices in clubs or organizations covered by this Chapter outweighs the interest of their members in private association.

**Sec. 76.110 Definitions.**

A. For purposes of this Chapter, a club or organization (hereafter "club") which is not distinctly private is any organization, institution, club or place of accommodation which satisfies the following requirements:

1. Has membership of whatever kind totalling 200 or more; and
2. Provides regular meal service by providing either directly or indirectly under a contract with another person, any meals on three or more days per week during two or more weeks per month during six or more months per year; and
3. Regularly accepts payments:
  - (a) from non-members for expenses incurred at the club by members or non-members in the furtherance of trade or business; or
  - (b) on behalf of non-members for expenses incurred at the club by non-members in the furtherance of trade or business.

B. "Regularly accepts payment" as used in this Chapter shall mean a club accepting as many payments during the course of a year as the number of weeks any part of which the club is available for use by members or non-members per year; the payments may be for dues, fees, use of space, facilities, services, meals or beverages.

C. "Furtherance of trade or business" as used in this Chapter shall mean payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual's employer or by a trade or business organization, or other payment made in connection with an individual's trade or business, including entertaining clients or business associates, holding meetings or other business-related events.

**Sec. 76.120 Prohibition Against Discrimination.**

A. It shall be unlawful for a club which is not distinctly private to deny to any person entry to facilities at, membership in, or the full enjoyment of said club or organization on the basis of sex, race, color, religion, ancestry, national origin, handicap or sexual orientation.

B. The provisions of this Chapter shall not apply to an institution organized and operated exclusively for religious purposes as provided in 26 U.S.C. Section 501(c)(3).

**Sec. 76.130 Enforcement and Penalties.**

A. Civil Action.

Any person may enforce the provisions of this Article by means of a civil action.

B. Injunctions.

1. Any person who commits an act, or proposes to commit an act, or engages in any pattern and practice of discrimination in violation of Section 76.120 may be enjoined therefrom by any court of competent jurisdiction.

2. Action for injunction under this subsection may be brought by any aggrieved person or by any person or entity who will fairly and adequately represent the interest of the protected class.

C. Penalties.

Any person who violates, or aids or incites another person to violate, the provisions of this Chapter is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than two hundred fifty dollars (\$250),

and such attorney's fees and court costs as may be determined by the court in addition thereto. In addition, the court may award punitive damages in a proper case.

D. Non-exclusive Remedies and Penalties.

Nothing in this Article shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

Sec. 76.140 No Criminal Penalties.

Notwithstanding any provision of this code to the contrary, no criminal penalties shall attach for any violation of the provisions of this Chapter.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

---

MAYOR

ATTEST:

---

CITY CLERK

**REPORT TO THE  
SACRAMENTO CITY COUNCIL**

**on**

**A PROPOSED ORDINANCE PROHIBITING  
DISCRIMINATION BY CLUBS OR ORGANIZATIONS  
WHICH ARE NOT DISTINCTLY PRIVATE**

**PREPARED BY**

**THE HUMAN RIGHTS/FAIR HOUSING COMMISSION  
OF THE CITY AND COUNTY OF SACRAMENTO**

**February 24, 1988**

ACKNOWLEDGEMENTS

COMMISSIONERS

Martha Powers, Chair  
Rosemary Mettrailer, Vice-Chair  
Dean Lan, Secretary  
Len Cramer, Treasurer  
Charles W. Adams, III  
Alcide "Sonny" Alforque  
Stephen Beede  
Fred Dawkins  
Robert Dresser  
Alicia Flores  
Martin L. Kennison  
Nkia Patterson  
Bruce Pomer  
Andrea Rosen

STAFF

Robbin DeShields Randolph  
Executive Director  
Deotha Chapman, Associate  
Derrick Lim, Associate  
Franklin Orosco, Associate  
Randy Shiroy, Senior Associate  
Dawn Weatherington, Secretary

The Commission wishes to acknowledge the members of the Executive Committee. The Committee, composed of Martha Powers (Chair), Leonard Cramer, Robert Dresser, Dean Lan, Rosemary Mettrailer and Andrea Rosen, reviewed and analyzed the testimony presented at the hearing and developed the following report and recommendations. Randy Shiroy, Senior Associate, provided staff support for the Committee.

REPORT TO THE SACRAMENTO CITY COUNCIL

on

A PROPOSED ORDINANCE PROHIBITING  
DISCRIMINATION BY CLUBS OR ORGANIZATIONS  
WHICH ARE NOT DISTINCTLY PRIVATE

Table of Contents

	<u>PAGES</u>
I. Introduction	1 - 2
II. Findings	3 - 7
III. Legal Issues in Addressing the Problem	8 - 11
IV. Recommendation	12
V. Index of Appendices	13

## REPORT

### I. INTRODUCTION

In July of 1987, the City Council referred a proposed ordinance Prohibiting Discrimination by Not Distinctly Private Clubs to the Human Rights/Fair Housing Commission for its review and recommendations.

As part of the review process, the Commission conducted a hearing on: "Clubs That Discriminate in Their Membership (on the basis of sex, race, color, religion, national origin, ancestry, sexual orientation, or physical handicap) and Where Business is Frequently Conducted."

The Commission invited individuals from a variety of business, civic and community groups to present testimony. At the hearing, held on October 22, 1987, a dozen presentations were given comprising nearly 2½ hours of testimony. These representatives were asked to address the following:

1. The nature and extent of the problem and which clubs are affected;
2. Who or which agencies are currently addressing the problem;
3. What approaches are viewed as most viable in addressing the problem.

A detailed summary of responses to the questions posed can be found in Appendix A.

The following individuals, organizations and agencies presented or submitted testimony:

- Manuel R. Espinoza, Deputy Director, Alcoholic Beverage Control
- Kenton P. Byers, Chief Counsel, Alcoholic Beverage Control
- Pat Garrett, Legislative Assistant to Assemblyman Terry Friedman, re: AB 2187
- Jess Gonzalez, Staff Attorney, Department of Fair Employment & Housing
- Rita Brandeis, Women's Rights Consultant, League of Women Voters, Sacramento
- Marvin Shoultes, Manager, The Sutter Club
- Barbara Thalacker, Executive Director, YWCA
- Lester Riggins, Chairman of the Advocacy and Issues Committee, Sacramento Urban League
- Will Bush, Director of Taxpayer Information Systems, Franchise Tax Board
- Amy King, Legislative Assistant, to Assemblywoman Gwen Moore, re: AB 239
- Marcy Virago, President, National Organization for Women, Sacramento Chapter
- Darryl Steinberg, Chair, Jewish Community Relations Council
- Susan Carlsen, Board Member, Women Lawyers of Sacramento

In addition, written comments were received from the Sacramento County Bar Association, the Office of the City Attorney of Los Angeles and the State Attorney General's Office.

It should be noted that while attempts were made to contact The Sutter Club and obtain clarification of its policies and practices, the Club did not provide any information beyond the letter and comments presented by Marvin Shoultes at the hearing (see Appendix D 1-9).

Based upon that testimony, the Commission makes the following findings.

## II. FINDINGS

### A. THE EXISTENCE OF CLUBS THAT DISCRIMINATE IN THEIR MEMBERSHIP AND WHERE BUSINESS IS FREQUENTLY CONDUCTED IS PERCEIVED BY THE COMMUNITY AS AN OBSTACLE TO THE ADVANCEMENT OF WOMEN AND MINORITIES IN BUSINESS AND THE PROFESSIONS.

While certain clubs claim to be private, or merely social, in nature, testimony before the Commission indicated that in reality, business meetings and activities occur at these clubs. Further, the membership dues and expenses of members are in many cases paid by their employers, or are claimed as business related tax deductions. In addition, membership in such clubs was seen by most of those testifying as a means of making business contacts and fostering relationships with clients and prospective clients. Clearly, such clubs would not be considered distinctly private or social in nature.

Eight of the nine presenters who addressed the question--most of them representing community groups with a large local membership--believed these clubs posed a hindrance to the advancement of women and minorities in business and the professions: Sacramento Chapter of the League of Women Voters; Young Women's Christian Association; Sacramento Urban League; Sacramento Chapter of the National Organization for Women; Jewish Community Relations Council; Women Lawyers of Sacramento; Assemblyman Terry Friedman; and the Office of Assemblywoman Gwen Moore.

The only presenter who felt the clubs did not pose such a hindrance was the representative of The Sutter Club.

B. ENACTMENT OF A LOCAL ORDINANCE WOULD SERVE TO ENHANCE EXISTING STATE LAWS AND REGULATIONS AND IN SOME INSTANCES, ELIMINATE CERTAIN EXEMPTIONS IN STATE ANTI-DISCRIMINATION PROVISIONS.

The Commission, based on the testimony presented, reached the conclusion that a local ordinance would enhance existing State laws and pending legislation and in certain instances, eliminate loopholes in current State anti-discrimination provisions, as follows:

1. Liquor Licenses - The Department of Alcoholic Beverage Control (ABC) enforces current State provisions prohibiting discrimination by clubs in the sale of liquor. However, clubs with Article IV liquor licenses (i.e. most social and fraternal clubs) are exempt from these provisions. In addition, pending State legislation AB 2187 (Friedman), while providing for the denial or revocation of a liquor license in clubs which discriminate in their membership, would continue to exempt clubs with Article IV liquor licenses.

*The proposed local ordinance would cover "not distinctly private clubs", which are currently exempt from both ABC anti-discrimination regulations and those proposed in pending State legislation.*

2. Tax Exemptions - The State Franchise Tax Board has recently promulgated new individual and corporate tax regulations, which would disallow deductions for business expenses incurred in clubs which discriminate in their membership. AB 239 (Moore), in addition to strengthening the new tax regulations through legislation, would require such clubs to provide notice on their receipts that expenses incurred in such private clubs are not tax deductible. *These changes, while eliminating public subsidy of expenses incurred in such clubs, would not directly affect discriminatory membership practices, as would the proposed ordinance.*

3. Unruh Civil Rights Act - The Unruh Civil Rights Act, Civil Code Section 51, covers discrimination in public accommodations/business establishments and "private clubs." The Court's interpretation of what constitutes a place of public accommodation or business establishment is rather broad. The Department of Fair Employment and Housing, which is the State agency charged with investigating complaints arising from violations of the Unruh Civil Rights Act, could act on an individual's complaint alleging discrimination by a "private club."

A local ordinance would define which establishments were, in fact, private and which were business establishments within the Unruh Act. In addition to allowing an individual to hire an attorney and file a lawsuit, it would allow the City of Sacramento to enforce the provisions of the ordinance by filing a civil action. *As such, the proposed ordinance would help to define which clubs may be considered not distinctly private and provide additional resources (City Attorney and private attorneys) for addressing the issue of discriminatory practices by such clubs.*

C. ENACTMENT OF A LOCAL ORDINANCE WAS STRONGLY SUPPORTED BY THOSE WHO TESTIFIED AT THE HEARING.

When asked what approach was viewed as most viable in addressing the problem of discriminatory membership practices in "not distinctly private clubs", those who testified at the hearing overwhelmingly supported enactment of a local ordinance.

Those organizations, agencies and individuals who voiced support for local action on the issue were Assemblyman Terry Friedman; League of Women Voters; YWCA; Sacramento Urban League; Sacramento Chapter of the National Organization for Women; Jewish Community

Relations Council; Women Lawyers of Sacramento; Office of the Los Angeles City Attorney; and the State Attorney General's Office.

Will Bush, Director of Taxpayer Information, Franchise Tax Board, stated that a local ordinance would enhance his agency's efforts in this area.

In addition, the Sacramento County Bar Association submitted a copy of a resolution adopted by their Bar Council in December, 1986, opposing discriminatory membership practices in private business clubs and urging local law firms not to hold functions at such clubs.

D. THE SUTTER CLUB WAS IDENTIFIED DURING THE HEARING AS THE ONLY CLUB WITHIN THE CITY LIMITS, WHICH WOULD BE AFFECTED BY ENACTMENT OF THE PROPOSED ORDINANCE.

Three speakers, Pat Garrett, Legislative Assistant to Assemblyman Terry Friedman, Barbara Thalacker, Executive Director of the YWCA, and Marcy Virago, President of the Sacramento Chapter of NOW, identified The Sutter Club as one of the clubs which may be affected. However, testimony by the manager of The Sutter Club rejected the claims by other speakers that it was not distinctly private. The Sutter Club representative also emphatically denied that any business activities were conducted at the Club. As evidence, he cited a house rule prohibiting the presence of papers or briefcases at the luncheon tables. Unfortunately, The Sutter Club's President, Hilton L. Williams, declined both verbal invitations and three written requests to appear at the hearing, or at subsequent Commission meetings, to answer Commissioner questions regarding club policies and practices. Although the current (1988) Sutter Club President, David T. Clark, wrote the Commission in late January and met with Commission staff to inquire about the status of this report, he, too, declined to

appear before the Commission to respond to questions regarding the Club's policies (see Appendix D). Answers to the Commissioner's questions may have provided a clearer picture of the effect the proposed ordinance might have on the Sutter Club.

III. LEGAL ISSUES IN ADDRESSING THE PROBLEM

During the hearing, a number of comments were received regarding legal issues and considerations. The Commission was particularly concerned with the following:

- A. Pre-emption by State or Federal law;
- B. Freedom of Association;
- C. Distinguishing "private" versus "not distinctly private" clubs;
- D. Coverage (protected groups) of any proposed ordinance.

A. Pre-emption by State or Federal Law

Pre-emption of a local ordinance by State law, the Unruh Civil Rights Act, was not determined to be a problem. According to testimony by Jess Gonzales, Staff Attorney, DFEH, the Unruh Civil Rights Act does not in and of itself contain a pre-emption clause. However, the Fair Employment and Housing Act (FEHA), Government Code Section 12948, does have a pre-emption clause contained in Government Code Section 12993 and is interpreted to include the Unruh Civil Rights Act. In addition, Mr. Gonzales stated that as long as any local ordinance remained consistent with the FEHA, and was no broader in coverage than the Unruh Civil Rights Act, there would not be a problem with pre-emption. (See Appendix B, pages 18 to 23.)

In addition, testimony submitted by the State Attorney General's Office opined that, "the proposed ordinance is both consistent with this State's policy to guarantee equal access to all business activities and is constitutionally sound."

The issue of Federal pre-emption of State law or local ordinance is less clear at this time. The United States Supreme Court has recently agreed to hear a challenge of a New York City Ordinance, which is similar to the proposed ordinance.

(New York State Club Association, Inc. vs City of New York [1987], 69 N.Y. 2d 211, probable jurisdiction noted [October 5, 1987], No. 86-1836, \_\_\_ s. ct. \_\_\_.)

However, the State Attorney General's Office, in referring to the case, stated, "we are confident that the New York City ordinance will be upheld as another legitimate method of addressing discriminatory practices which limit business opportunities." (See Appendix C, page 11.)

B. Freedom of Association

In regard to questions involving the freedom of association, the Courts have consistently balanced this right against the state's interest in eliminating invidious discrimination. Again, quoting from testimony by the State Attorney General's Office:

"Freedom of intimate association is, of course, constitutionally guaranteed by the First Amendment, but the two recent decisions of the Supreme Court describing that guarantee explain that constitutional protection only extends to 'those relationships, including family relationships, that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences and beliefs, but also distinctly personal aspects of one's life.'"

(Rotary, 107 S.Ct. at 1946, quoting Roberts vs. United States Jaycees, 468 U.S. 609, 619-620 [1984].)

"Clubs in which business activities occur are inherently not distinctly personal, and furthermore, even if regulation of discriminatory practices may result in some minor infringement of protected rights of privacy and association, any such infringement is fully justified by the compelling interest in eliminating invidious discrimination."

(See, Jaycees, 468 U.S., at 1623; Rotary, 107 S.Ct., at 1947; and Bohemian Club, 187 Cal.App.3d, at 14." [Appendix C, pages 10 to 11.] See also testimony of Jess Gonzales, Staff Attorney, DFEH, Appendix B, pages 18 to 23; and Office of the Los Angeles City Attorney Appendix C, pages 6 to 9.)

C. Distinguishing by Size of Club

Within the criteria for determining which clubs were "not distinctly private", the proposed ordinance suggested a club membership size of 100 or more members. Both New York's and Los Angeles' ordinances apply to clubs of 400 or more. Presumably, it was felt that a local ordinance should use a smaller number since Sacramento's population is smaller.

However, written comments submitted by Pamela A. Albers, Deputy City Attorney, Office of the City Attorney, Los Angeles, suggests that the number (100) may not be sufficiently high. The City Attorney felt that a smaller club would try to claim an "intimacy of relationship", which would allow it full First Amendment Protection. (See Appendix C, pages 6 to 9.)

The Commission recommends that the Council adopt a standard of 200 or more members for "not distinctly private clubs."

D. Coverage

Among the protected groups enumerated in the proposed ordinance, coverage was extended to include sexual orientation and physical handicap. This would be consistent with earlier Council actions in including these groups for protection.

IV. RECOMMENDATION

The Human Rights/Fair Housing Commission recommends that the City Council enact the proposed ordinance to prohibit discrimination based on sex, race, color, religion, national origin, ancestry, sexual orientation, and physical handicap, by clubs or organizations which are "not distinctly private", with the following modification: The criteria will include clubs with two hundred (200) or more members.

V. INDEX OF APPENDICES

A. <u>SUMMARY OF RESPONSES TO QUESTIONS POSED AT HEARING</u>	A 1-7
B. <u>HEARING TESTIMONY</u>	
Opening Statement by Commission Chairman Martin L. Kennison	B 1
MANUEL R. ESPINOZA, Deputy Director, Alcoholic Beverage Control KENTON P. BYERS, Chief Counsel, Alcoholic Beverage Control	B 2-10
PAT GARRETT, Legislative Assistant to Assemblyman Terry Friedman, re: AB 2187	B 11-17
JESS GONZALEZ, Staff Attorney, Department of Fair Employment & Housing	B 18-23
RITA BRANDEIS, Women's Rights Consultant, League of Women Voters, Sacramento	B 24-25
MARVIN SHOULTES, Manager, The Sutter Club	B 26-31
BARBARA THALACKER, Executive Director, YWCA	B 32-35
LESTER RIGGINS, Chairman of the Advocacy and Issues Committee Sacramento Urban League	B 36-38
WILL BUSH, Director of Taxpayer Information Systems Franchise Tax Board	B 39-41
AMY KING, Legislative Assistant to Assemblywoman Gwen Moore, re: AB 239	B 42-47
MARCY VIRAGO, President National Organization for Women, Sacramento Chapter	B 48-49
DARRYL STEINBERG, Chair Jewish Community Relations Council	B 50
SUSAN CARLSEN, Board Member Women Lawyers of Sacramento	B 51-54
Public Comment	B 55
C. <u>WRITTEN COMMENTS AND TESTIMONY</u>	
1. Sacramento County Bar Association	C 1-4
2. Office of the City Attorney of Los Angeles	C 5-9
3. State Attorney General's Opinion	C 10-11
D. <u>CORRESPONDENCE WITH THE SUTTER CLUB</u>	D 1-9
E. <u>PROPOSED ORDINANCE</u>	E 1-5

SUMMARY OF RESPONSES TO QUESTIONS POSED AT HEARINGA. The Nature and Extent of the Problem and Which Clubs are Affected

Written and verbal testimony by eleven organizations, agencies and State legislators generally described the problem of the existence of clubs that discriminate in their membership and where business is frequently conducted as an anachronistic form of subtle discrimination, which serves as an obstacle to the advancement of women and minorities in business and the professions. Such clubs were viewed as places where business contacts are frequently made and nurtured.

Comments by Barbara Thalacker, Executive Director of the YWCA, are illustrative of the testimony received by the Commission in describing the problem as follows: "Those who would scoff and say the exclusion to socialize in 'private' clubs should remain the rights of the members sound a bit like the 'boys only' tree houses, or the 'whites only' outhouses of our nation's past. But we are not talking here of a social club. Tax deductions are not taken for tree house memberships and business events don't rent space there. We are speaking of clubs where business is conducted regularly and where careers are begun, developed and fostered."

Ruthann G. Ziegler, President, Women Lawyers of Sacramento, also described the problem as one in which, "It must be recognized, at least in the 1980's, that the majority of the existing decision-makers in business, banking, insurance and law are males. Those are still the people who are meeting other males at their clubs to which women or other minorities have limited or no access. (See testimony, Women Lawyers of Sacramento; Young Women's Christian Association [YWCA]; The National Organization for Women, Sacramento [NOW]; League of Women Voters, Sacramento; Sacramento Urban League; Jewish Community Relations Council; the Office of Assemblyman Terry Friedman; and the Office of Assemblywoman Gwen Moore. (See also the testimony of the Sacramento County Bar Association; and the State Attorney General.)

In reviewing the question of which clubs would be affected, only The Sutter Club was identified by those testifying as a club which would be affected. (See testimony of Pat Garrett, Legislative Assistant to Assemblyman Terry Friedman; Barbara Thalacker, Executive Director, YWCA; and Marcy Virago, President, Sacramento Chapter, NOW.)

In his written testimony, Hilton L. Williams, President of The Sutter Club, disagreed with the above assessment stating that, "The Sutter Club, with approximately 800 members, is a bona fide distinctly private organization dedicated to serving the social purpose of its membership."

It should be noted that Mr. Williams declined two later requests by the Commission to appear and respond to Commissioner's questions regarding Club policies. While David T. Clark, current President of the Sutter Club, met with Commission staff and inquired into the status of the report, he, too, declined to appear before the Commission or the members of the Executive Committee to respond to questions regarding Club policies.

B. Who or Which Agencies are Currently Addressing the Problem

The testimony received by the Commission covered government enforcement and regulatory activities and State legislation regarding not distinctly private clubs as follows:

1. The Department of Alcoholic Beverage Control (ABC)

Testimony by the ABC indicated that current liquor licensing procedures under the provisions of the Business and Professions Code §125.6 prohibit discrimination by clubs in the sale of liquor. ABC, upon receiving a complaint can, in turn, file an accusation, which then goes to a hearing process. The departmental process for handling complaints was described as a long and complicated one.

However, the ABC noted there is an exemption to the provisions prohibiting discrimination under the Department's Article IV (type 51) club license.

2. State Franchise Tax Board

The Tax Board has recently adopted regulations which disallow any deductions for expenses incurred in clubs which discriminate. More specifically, the language of Sections 17201 and 24333 of Title 18 of the California Administrative Code reads as follows:

"On or after January 1, 1988, business expense tax deductions will no longer be allowed with respect to payments to a club which restricts membership or the use of its services or facilities on the basis of age, sex, race, color, religion, national origin, or ancestry. Clubs (it further goes on to define) means a club as defined in Article 4, commencing with Section 23425 of Chapter 3 of Division 9 of the Business and Professions Code."

The regulations essentially prohibit members of clubs which discriminate from deducting membership dues or expenses incurred in these clubs on either their personal or corporate income tax returns but would not directly affect club policies. Additional information on specific enforcement procedures are in the process of being developed by the Franchise Tax Board and were not available as of the hearing.

3. Department of Fair Employment and Housing (DFEH)

DFEH is the State agency responsible for enforcement of the Fair Employment and Housing Act, Government Code Section 12948, and the Unruh Civil Rights Act Section 51.

Issues involving membership in "private clubs" would come under the coverage of the Unruh Act, which reads as follows:

"All persons within the jurisdiction of this State are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

In his testimony, Jess Gonzales, DFEH Staff Attorney, described the coverage of the Unruh Act as very broad, noting, "You can read in that the Unruh Civil Rights Act covers a lot of the discriminatory practices by private clubs, again, if in their private association they (clubs) are engaged in business activities."

#### 4. State Legislation

Two pieces of legislation aimed at clubs which discriminate in their membership have been introduced in the State Legislature, AB 2187 (Friedman) and AB 239 (Moore). Assemblyman Terry Friedman's bill would provide for the revoking or denial of a liquor license to a club which discriminates in its membership on account of a person's color, race, religion, ancestry, national origin, sex, or age, with the exception of Article IV clubs, which were also mentioned in testimony by the ABC.

In addition, Assemblywoman Gwen Moore's bill would prohibit (like the Franchise Tax Board regulations) tax deductions for business expenses incurred at "private clubs which discriminate in membership or services." The bill would further require affected clubs to state on their receipts that expenses incurred at the club are not tax deductible. The bill also carries an implementation date of January 1, 1990.

#### C. What Approaches are Viewed as Most Viable

Testimony received by the Commission showed overwhelming support for enactment of a local ordinance prohibiting clubs which discriminate in their membership and where business is frequently conducted. The only opposition to such an ordinance came from The Sutter Club and one member of the audience, who stated that he represented himself only and felt it would be an infringement on the right to association.

Those organizations and individuals who voiced support for local action on the issue were Assemblyman Terry Friedman, League of Women Voters, YWCA, Sacramento Urban League, Sacramento Chapter of the National Organization for Women, Jewish Community Relations Council, Women Lawyers of Sacramento, Office of the Los Angeles City Attorney and the State Attorney General's Office.

In addition, the Sacramento County Bar Association, which did not directly address the question in its written submission has gone on record in opposition to the continuation of discriminatory membership practices in private business clubs. It should also be noted that Will Bush, Director of Taxpayer Information Systems of the Franchise Tax Board believes that enactment of a local ordinance prohibiting discrimination by "private" clubs would enhance his agency's efforts in this area.

Representatives of the ABC, DFEH and Assemblywoman Moore's office did not directly address the question of local action.

MARTIN L. KENNISON  
Chair  
Human Rights/Fair Housing Commission

Thank you very much for attending. My name is Martin Kennison; I am the Chair of the Sacramento Human Rights/Fair Housing Commission. I am pleased to have other Commissioners on the panel with me. Over to my right is Commissioner Rosen; Commissioner Cramer; Commissioner Flores; our Vice-Chair, Commissioner Powers; and Commissioner Metrailler.

As most of you know, the Human Rights/Fair Housing Commission has been asked by the Sacramento City Council to undertake this review of a proposed ordinance prohibiting discrimination by not distinctly private clubs. So, that is the reason why we are here. The mission of Commissioners in these hearings is to gather information regarding the nature and extend of the problem and which clubs are affected, who or which agencies are currently addressing the problem. So those are our goals. Following this hearing, our Commission will evaluate the suggested approaches that I am sure will come from this hearing and we will make a final report to the City Council in January.

At the end of our hearing, we will allow public comment (Note: this will be limited to about three minutes). We are pleased this afternoon, to have as our first person to hear from, Manuel Espinoza. He is the Deputy Director of Alcoholic Beverage Control, along with Kenton P. Byers, Chief Counsel, Alcoholic Beverage Control.

MANUEL ESPINOZA  
Deputy Director  
Alcoholic Beverage Control

Good afternoon Mr. Chairman and members of the Commission. On behalf of the Department of Alcoholic Beverage Control, it is a pleasure to be here to be able to accept the invitation to participate in your hearings on this most salient problem. We will be happy to provide the Commission and your staff with any information the department has in its records that are public and which will assist you in considering the subject that you are now embarked on. As you said, I have with me, Chief Counsel Kenton Byers and I hope between the two of us, we will be able to answer any questions that you may have in connection with the operations of private clubs that are licensed to sell alcoholic beverages.

Mr. Byers is prepared to lead off by giving a short statement of the status of current law in the area as it applies to ABC licenses. But before that, if I could, I would like to give the Commission a print-out that we have made that lists the number and the names of all the club licenses in the County; it also breaks down the City of Sacramento. If I could right now, I would like to turn it over to Ken, who will explain the current status of ABC law. Thank you.

KENTON P. BYERS  
Chief Counsel  
Alcoholic Beverage Control

Mr. Chair and members of the Commission, I am Kenton P. Byers, Chief Counsel of the Department. The California Constitution, in several provisions of the Alcoholic Control Act, provides for the issuance of a number of different types of club licenses to people who qualify and, essentially, these club licenses can be broken down into several different types. The most in number are Article IV licenses, which are comprised primarily of fraternal organizations: golf clubs, country clubs and miscellaneous (other social clubs); perhaps 30 different types of individual licenses under our Article IV and they probably come to about 900 throughout the state. The next most prevalent number of clubs which we issue licenses to are veterans clubs, which are issued under our Article V, of Division 9 of the Business and Professions Code, and they are for veterans and their members. Another type of club which we issue licenses for is what is called an on-sale general club, which is really what we would call an on-sale general license. This allows service of alcoholic beverages to members and guests. It is limited in number to probably 150 for the entire state. Now these are licenses which, at one time or another, people who hold them or the clubs that held them through the years originally paid money for as an original on-sale general license and an original on-sale general license in California now runs from \$6,000 to \$100,000 roughly, depending upon availability and the number of licenses per County and the population. We do not issue these types of licenses anymore and we have not for some 15 or so years. They were an historic creation back about 1957. We found out that when an Attorney General's opinion came out indicating that such on-sale general bona fide public eating places' licenses had to be open to the public, we found that many of these clubs were actually operating to service to private persons. At that point and time, they were offered an opportunity to convert their license to this on-sale general club.

Another type of license which is subject of a type of club license issuance is an on-sale general, special license which is, again, a full on-sale general license someone has had to pay money for and it allows the service of alcoholic beverages to club members and their bona fide guests. That is the statutory creation which came into the legislation probably about 1966 or 1967. There are about 150 of those throughout the state.

Club license privileges for all of these clubs are limited to the sale and service of alcoholic beverages, beer, wine and distilled spirits, to members and guests only. The public, generally, is not allowed to consume alcoholic beverages there and in order for one to be a non-member and consume alcoholic beverages in a club license premises under the law, they must be invited as a guest and a guest is defined statutorily in a long and complex way. Basically, you have to be invited there for a specific occasion and expressly invited.

The Article IV clubs and Veterans Clubs, which I mentioned before, generally are free licenses. We issue them at no original issuance costs. In other words, the fraternal organizations, when they meet the qualifications within the statute, pay no original fee.

The other types of licenses which I mentioned to you are general licenses, basic in character and require an original fee of anywhere from \$6,000 to \$100,000 (\$6,000 originally and then a transfer of up to \$100,000 and the annual renewal fees range between \$400 and \$600, depending on the location and where they are at). With regard to discrimination, within the provisions of the Business and Professions, Code 125.6 was enacted 12 to 15 years ago. This provision essentially says that one who is licensed by the State may not discriminate in the exercise of his license activity and that if you were to go into a barber shop, for instance, and the barber is licensed by the State, they may not discriminate in refusing to cut your hair because you are Black, or a woman, or whatever; they may not discriminate in those services. The same is true of all people who are licensed by the State and our licensees are subject to that particular provision. We, in fact, do file accusations against many of our licensees for violation of Section 125.6. But, also within that particular provision, there is an exclusion to the law which essentially applies to the Article IV license, where any of our licensees, I will give you an example, except an Elk's Club, for instance, would be in violation of law for refusing to serve someone because he or she is Black, or he is not a "she", or vice versa. The fraternal organizations, or any of the other licensees with a few exceptions (again under Article IV), actually there is no prohibition. Historically, legislation has been introduced and tried to alleviate what is one form of discrimination or another. I have done our legislative work for the department some 17 or 18 years and I have seen probably 15 or 20 bills introduced through the legislature to amend the law to one form or another, to eliminate various forms of discrimination and those bills have taken the form of trying to amend Section 125.6 to eliminate the exception dealing with our Article IV club licenses in broad general bills stating that no licensees shall be issued or renewed for a person or club that discriminates on the grounds of a number of qualifications.

I can recall the first legislation 15 years ago in that area was covered by Leon Ralph, who was then Chairman of Assembly GO Committee. Traditionally, that legislation has met tremendous opposition in the legislature. All forms of clubs seem to want to protect their various perceived rights and realistically, most bills which have, or would have, strengthened the laws prohibiting discrimination have not made it through the legislature. A tremendous amount of opposition is raised by letter writing, organized campaigns and appearances by organized lobbyists on behalf of the various clubs.

As a matter of fact, I mentioned that Leon Ralph had been the first that I can recall that carried legislation along those lines. The last 5 or 6 years, Assemblywoman Gwen Moore has carried a number of pieces of legislation dealing with this type of thing and this year, one of the first bills that she carried in the area of discrimination finally got through and was signed by the Governor, dealing with state tax exemptions; that type of thing.

Our particular investigation process with regards to any type of a violation, primarily depends upon the complaint, and we do have investigations dealing in violations of Section 125.6. The vast majority of those have been against public places, as opposed to private club licenses. For instance, we have had, over the past 3 or 4 years, a number of cases going as high as the Supreme Court dealing with prosecutions we have made under 125.6 in particular, they have been situations where a public night club refused to admit men or women,

or Blacks, or some other minority and we, in turn, filed accusations based upon specific evidence of violations of law. The only way we can take action for any violation in all practical matters is filing an accusation, which gives that person the right to a hearing, etc., and it is a long, complicated process. Your proposed ordinance, as I read it, is not in any way related to alcoholic beverages, which is good because you would have a pre-emption problem if it were and I would perceive that it would pick up all of our club licensees of whatever type. If I can be of any further assistance to you in answering questions you might have, I'll be glad to help you.

Chair: "Thank you very much."

Commissioner Rosen: Thank you for your information regarding the ordinance. One further question on that, though; would it inhibit in any way, the current accusation process?

Mr. Byers: No, we are still bound by our laws and our discrimination laws and if, in fact, you had an ordinance, the ordinance is much broader than what we have. We in no way would be restricted from enforcing our own laws. We would not be enforcing your ordinance, but our own laws certainly.

Commissioner Rosen: Licenses 50, 51, 52 and 57; are those the only licenses that are exempted under 125.6?

Mr. Byers: No, that includes more than Article IV Clubs. The number 51 is the license type that we're referring to as having exclusion in that printout (referring to handout). Everyone else under that category, or on that printout, is in fact liable for violation of 125.6.

Commissioner Rosen: So, the only clubs exempted are ...

Mr. Byers: I should additionally point out that as part of legislation through the years, there have been 5 or 6 specific types of club licenses created under Article IV, which have specific non-discrimination provisions, notwithstanding the fact they are under Article IV, they are prohibited by their own terms from discriminating.

Commissioner Rosen: But other than Article IV clubs, everyone else is prohibited from discriminating.

Mr. Byers: That's correct.

Commissioner Rosen: And those people under Article IV would be included in our ordinance.

Mr. Byers: Yes, assuming the membership met your requirements. We have some clubs with less than 100 members.

KEYTYPE

- "50" - On Sale General Club License  
Section 23037 B & P Code
- Art. 4* "51" - Club License  
Section 23425, et. seq., B & P Code  
("Article 4" Licenses)
- "52" - Veterans Club License  
Section 23452 B & P Code
- "57" - Special On Sale General License  
Section 23399.2 B & P Code

GEO CODE

- 3400 - Unincorporated area of Sacramento County
- 3405 - City of Sacramento
- 3401 - City of Folsom

LIST OF ACTIVE TYPE 51, 51, 52, AND 57 LICENSES  
IN THE SACRAMENTO COUNTY  
AS OF OCTOBER 21, 1987

TYPE	FILE NUMBER	STATUS	GEO CODE	DIST	ORIG-DATE	LAST-DATE	PRIMARY NAME PREM STREET ADDRESS	MAIL ADDRESS
51	010752	ACT	3400	23		01 02 87	ELKS LODGE 2103 CARMICHAEL 5631 CYPRESS AVE CARMICHAEL CA	P O BOX 387 CARMICHAEL CA 95608
57	175244	ACT	3400	23	09 26 85	01 02 87	ARDEN HILLS COUNTRY CLUB INC 1315 MISSION AVE CARMICHAEL CA 95678	
51	605567	ACT	3400	23	01 01 77	01 02 87	WILLOW CREEK RACQUET CLUB INC 3555 MARIPOSA AVE CITRUS HEIGHTS CA 95610	
51	019097	ACT	3400	23		01 22 87	VALLEY HI COUNTRY CLUB 9595 FRANKLIN BLVD ELK GROVE CA 95624	P O BOX 9517 SACRAMENTO CA 95823
51	193892	ACT	3400	23	11 17 86	01 02 87	ELKS LODGE 2577 10427 STOCKTON BLVD ELK GROVE CA 95624	P O BOX 30 ELK GROVE CA 95624
52	027495	ACT	3400	23		01 02 87	VFW CENTER TOWNSHIP POST 6158 8390 KRUTHOF WAY FAIR OAKS CA 95628	P O BOX 1650 ORANGEVALE CA 95662
51	040891	ACT	3400	23		01 02 87	NORTH RIDGE COUNTRY CLUB 7600 S MARIPOSA RD FAIR OAKS CA 95628	P O BOX 326 FAIR OAKS CA 95628
52	064813	ACT	3400	23		01 02 87	VFW GEN JOHN J FERSHING POST #4647 3300 U ST NORTH HIGHLANDS CA 95660	P O BOX 1014 NORTH HIGHLANDS CA 95660
52	144599	ACT	3400	23	09 02 83	01 02 87	VFW POST #3345 9346 GREENBACK LN UNITS 11 & 12 ORANGEVALE CA 95662	P O BOX 336 ORANGEVALE CA 95662
51	189097	ACT	3400	23	06 18 86	01 20 87	MOOSE LODGE #1926 6609 MAIN ST E & F ORANGEVALE CA 95662	
51	181031	ACT	3400	23	03 31 86	01 02 87	ELKS LODGE #2484 RANCHO CORDOVA 11440 ELKS CIR RANCHO CORDOVA CA 95670	P O BOX 204 RANCHO CORDOVA CA 95670

LIST OF ACTIVE TYPE 50, 51, 52, AND 57 LICENSES  
IN THE SACRAMENTO COUNTY  
AS OF OCTOBER 21, 1987

TYPE	FILE NUMBER	STATUS	GEO CODE	DIST	ORIG-DATE	LAST-DATE	PRIMARY NAME PREM STREET ADDRESS	MAIL ADDRESS
51	116760	ACT	3400	23	07 27 82	01 02 87	MOOSE LODGE 2154 11330 SUNCO BLDG A RANCHO CORDOVA CA 95670	
52	055913	ACT	3400	23		01 20 87	AMERICAN LEGION POST 521 6700 EIGHTH ST RIO LINCA CA 95673	
51	191534	ACT	3400	23	10 06 86	01 20 87	MOOSE LODGE #2060 6615 FRONT ST RIO LINCA CA 95673	
51	341109	ACT	3400	23	07 01 78	01 02 87	DEL HORTE SWIMMING & TENNIS CLUB 3040 RECERRA WAY SACRAMENTO CA 95821	
51	113827	ACT	3400	23	12 28 81	01 02 87	MOOSE LODGE OF SOUTH SACRAMENTO 258 8356 FLORIN RD SACRAMENTO CA 95828	
57	183600	ACT	3400	23	13 24 86	01 02 87	AL & ASSOCIATES PROPERTY SERVICES 9580 JACKSON RD SACRAMENTO CA 95826	
51	137058	ACT	3400	23	06 29 83	01 02 87	DEL PASO COUNTRY CLUB 3333 MARCONI AVE SACRAMENTO CA 95821	
51	046384	ACT	3400	23		01 02 87	WESTERN HORIZON CLUB OF SACRAMENTO METROPOLITAN AIRPORT BLDG 2 SACRAMENTO CA	P O BOX 92005 WORLD WY PC XTAX DEPT LOS ANGELES CA 90099
52	009628	ACT	3400	23	03 01 76	01 02 87	VFW SOUTH SACRAMENTO POST #1267 7576 STOCKTON BLVD SACRAMENTO CA 95823	
52	064193	ACT	3461	23		01 02 87	VFW POST 6634 FORREST ST W/S 1/4M W FOLSCM BLVD FOLSOM CA 95630	303 FOREST ST FOLSOM CA 95630
51	041549	ACT	3461	23		01 02 87	MOOSE LODGE FOLSOM #2009 203 SCOTT ST FOLSOM CA 95630	P O BOX 455 FOLSOM CA 95630

Appendix B-8

20 - County

LIST OF ACTIVE TYPE 50, 51, 52, AND 57 LICENSES  
IN THE SACRAMENTO COUNTY  
AS OF OCTOBER 21, 1997

TYPE	FILE NUMBER	STATUS	GEO CODE	DIST	ORIG-DATE	LAST-DATE	PRIMARY NAME PREM STREET ADDRESS	MAIL ADDRESS
51	015512	ACT	3401	23	01 02 87		EAGLES LODGE AERIE 929 215 SCOTT ST FOLSOM CA 95630	P O BOX 72 FOLSOM CA 95630
52	J38243	ACT	3405	23	01 02 87		AMERICAN LEGION CHAPLES EGGEN POST 1550 AUBURN BLVD SACRAMENTO CA 95615	
51	025143	ACT	3405	23	01 02 87		SACRAMENTO CO HORSEMENS ASSOC IAC 3200 LONGVIEW DR SACRAMENTO CA 95660	
51	014505	ACT	3405	23	01 29 81	01 02 87	ELKS LODGE #1587 3634 MARYSVILLE BLVD SACRAMENTO CA 95838	P O BOX 38608 SACRAMENTO CA 95838
51	029690	ACT	3405	23	01 02 87		SUTTER LAWN TENNIS CLUB INC 3951 N ST SACRAMENTO CA 95816	
51	086632	ACT	3405	23	03 26 80	01 02 87	KNIGHTS OF COLUMBUS #953 5961 NEWMAN CT SACRAMENTO CA 95619	
50	032716	ACT	3405	23	01 02 87		SUTTER CLUB 1220 NINTH ST SACRAMENTO CA 95814	
51	J39223	ACT	3405	23	01 02 87		PARK TERRACE SWIMMING & TENNIS CLUB 5500 PARKFIELD CT SACRAMENTO CA 95822	
51	003205	ACT	3405	23	01 02 87		MOOSE LODGE NORTH SACRAMENTO #2022 2531 PIC LINDA BLVD SACRAMENTO CA 95815	
52	053382	ACT	3405	23	01 02 87		AMERICAN LEGION POST 447 720 SANTIAGO AVE SACRAMENTO CA 95815	
51	052385	ACT	3405	23	11 01 76	01 02 87	SPARE TIME INC 119 SCRIPPS DR SACRAMENTO CA 95823	

LIST OF ACTIVE TYPE 50, 51, 52, AND 57 LICENSES  
IN THE SACRAMENTO COUNTY  
AS OF OCTOBER 21, 1987

TYPE	FILE NUMBER	STATUS	GEN CODE	DIST	ORIG-DATE	LAST-DATE	PRIMARY NAME PREM STREET ADDRESS	MAIL ADDRESS
51	049508	ACT		3405 23	01 02 87		MOOSE LODGE 1020 SACTO 4346 SECOND AVE --- SACRAMENTO CA 95818	
52	029428	ACT		3405 23	01 02 87		VFW LT LANSDALE POST 67 2784 STOCKTON BLVD SACRAMENTO CA 95817	
51	012257	ACT		3405 23	01 02 87		ELKS LODGE W CAPITAL CITY 1147 3704-06 STOCKTON BLVD SACRAMENTO CA	P O BOX 5006 SACRAMENTO CA 95817
52	053334	ACT		3405 23	02 05 87		AMERICAN LEGION FORT SUTTER PST 392 1119-21 21ST ST --- SACRAMENTO CA 95814	
51	055926	ACT		3405 23	01 02 87		IMPROVED ORDER OF REDMEN SACRAMENTO 1127 21ST ST SACRAMENTO CA 95814	

IS City

PAT GARRETT  
Legislative Assistant to  
Assemblyman Terry Friedman

Mr. Chairman and members, my name is Pat Garrett and I am Legislative Assistant to Assemblyman Friedman. He wishes to express his sincere regret that he could not be here personally today—this is an issue that is very important to him, but unfortunately, he was detained in Los Angeles. He has, however, asked that I read this statement to you on the proposed ordinance: (statement provided)

State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0001  
(916) 445-4956

Appendix B-12

Committees:  
Aging and Long Term Care  
Education  
Human Services  
Judiciary  
Public Safety

Subcommittees:  
Educational Reform  
Administration of Justice

# Assembly California Legislature

TERRY B. FRIEDMAN

ASSEMBLYMAN, FORTY-THIRD DISTRICT

Testimony of Assemblyman Terry B. Friedman

before the  
Human Rights/Fair Housing Commission  
of the City and County of Sacramento

Mr. Chairman, Members of the Commission:

I sincerely regret that I am not able to appear in person today, however, I have asked my Legislative Assistant, Pat Garrett to read my statement to you.

The issue of discrimination by so-called private clubs is certainly not new. Many of these clubs have been in operation for over a century and use the same membership criteria that was established years before women even gained the vote and decades before the civil rights movement. However, as California and the United States have progressed during the twentieth century, the so-called private clubs of our state have clung to the archaic and antiquated policies of past centuries.

But the tolerance of this outdated and invidious discrimination is coming to a close.

My legislation, AB 2187, which will be heard on the Assembly floor in January, removes the current state support and encouragement of discrimination by private clubs by denying the issuance or renewal of an alcoholic beverage license to clubs, as defined, which discriminate. AB 2187 closely resembles the Los Angeles and New York city ordinances in its

definition of clubs which are not distinctly private. However, it varies from these models by it's emphasis on state action, specifically, liquor licenses. Thus, in addition, it defines the type of license which is held by the club. As a result, there are fewer than 75 clubs in the state which could be subject to its provisions. Included in that number is only one club in the Sacramento area--the Sutter Club. Under the provisions of AB 2187, if it were determined that, for example, the Sutter Club participated in discriminatory membership practices, the club would lose it's license to sell any alcoholic beverages.

AB 2187, and similar measures which have been introduced in the Legislature over the last decade, has faced strong opposition from the special interest lobbies which seek to maintain their dinosaur-like approach to civil rights. AB 2187 is, in fact, the first bill of its kind to successfully pass out of an Assembly policy committee.

I believe that the actions taken this year around the country and in this state indicate that the momentum for action on this important civil rights issue is long overdue. I strongly urge the members of this Commission to join with the United States Supreme Court, the California Legislature, the State Franchise Tax Board and the Cities of Los Angeles, New York and Boston and take swift and sure action to ensure the equal rights of all citizens by adopting this proposed ordinance.

AMENDED IN ASSEMBLY JULY 8, 1987

AMENDED IN ASSEMBLY MAY 11, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2187**

---

**Introduced by Assembly Members Friedman, Moore, Calderon, Harris, Isenberg, Katz, Tanner, and Maxine Waters Bane, Chacon, Calderon, Eastin, Harris, Hayden, Hughes, Isenberg, Katz, Killea, Klehs, Margolin, Moore, Polanco, Tanner, Vasconcellos, and Maxine Waters**  
*(Coauthor: Senator Watson)*

March 6, 1987

---

**An act to add Section 23436 to the Business and Professions Code, relating to alcoholic beverages.**

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 2187, as amended, Friedman. Alcoholic beverages.**

Existing law provides for the issuance of an alcoholic beverage license to bona fide clubs meeting specified requirements. The law prohibits certain specified clubs from making any discrimination, distinction, or restriction against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age.

This bill would, on and after January 1, 1988, prohibit the issuance or renewal of any club license to a club, as defined, *with specified exceptions*, which makes any discrimination, distinction, or restriction for the purpose of membership against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23436 is added to the Business  
2 and Professions Code, to read:

3 23436. (a) Notwithstanding any other provision of  
4 this division, on and after January 1, 1988, no club license  
5 shall be issued or renewed to any club which makes any  
6 discrimination, distinction, or restriction for purposes of  
7 membership against any person on account of the  
8 person's color, race, religion, ancestry, national origin,  
9 sex, or age.

10 (b) (1) As used in this section, "club" means any  
11 organization, institution, or place of accommodation  
12 which satisfies all of the following requirements:

13 (A) It has a membership of 400 or more.

14 (B) It provides regular meal service.

15 (C) It regularly accepts payment in either of the  
16 following manners:

17 (i) From nonmembers, for expenses incurred at the  
18 club by members or nonmembers in the furtherance of  
19 trade or business.

20 (ii) On behalf of nonmembers, for expenses incurred  
21 at the club by nonmembers in the furtherance of trade or  
22 business.

23 (D) *It possesses an on-sale general license for bona*  
24 *fide clubs as specified in subdivision (a) of paragraph*  
25 *(30) of Section 23320.*

26 (2) As used in this section, "regularly accepts  
27 payment" means that a club accepts as many payments  
28 during the course of a year as the number of weeks any  
29 part of which the club is available for use by members or  
30 nonmembers during a year; the payments may be for  
31 dues, fees, use of space, facilities, services, meals, or  
32 beverages.

33 (3) As used in this section, "regular meal service"  
34 means the provision, directly, or indirectly pursuant to  
35 contract, of any meal on three or more days a week,  
36 during two or more weeks a month, during six or more  
37 months a year; contract, of any lunch or afternoon meal  
38 or meal service and dinner or evening meal or meal

1 service on three or more days a week, during two or more  
2 weeks a month, during six and more months per year.

3 (c) Nothing in this section shall be construed to limit  
4 the ability of clubs to make their facilities available to  
5 outside organizations, unaffiliated with the clubs, and this  
6 use shall not be included as a payment under paragraph  
7 (2) of subdivision (b) or as a meal or meal service under  
8 paragraph (3) of subdivision (b).

9 (d) This section does not apply to bona fide clubs  
10 which restrict their membership on the basis of ethnic or  
11 religious origin because the organization's basis is to  
12 provide a gathering place where persons of the same  
13 distinct ethnic or religious origin can freely associate  
14 together.

15 (e) This section does not apply to bona fide clubs  
16 which restrict their membership on the basis of  
17 attainment of a particular age because the organization's  
18 basis is to provide a gathering place to meet the physical  
19 and social needs of senior citizens.

20 (f) Nothing in this section shall be construed to  
21 supersede Section 51 of the Civil Code.

THE FOLLOWING ARE THE ONLY CLUBS IN CALIFORNIA WHICH MAY FALL UNDER THE PROVISIONS OF AB 2187. EACH CLUB ON THE LIST MUST REVIEW ITS OWN OPERATIONS TO DETERMINE WHETHER OR NOT AB 2187 WILL IMPACT THEM.

ANNANDALE GOLF CLUB, PASADENA  
 ATHENIAN NILE CLUB, OAKLAND  
 THE BEACH CLUB, INC., SANTA MONICA  
 BEL AIR BAY CLUB LTD., PACIFIC PALISADES  
 BEL AIR COUNTRY CLUB, LOS ANGELES  
 BURLINGAME COUNTRY CLUB, HILLSBOROUGH  
 THE CALIFORNIA CLUB, LOS ANGELES  
 CALIFORNIA TENNIS CLUB, SAN FRANCISCO  
 COLOMBO CLUB, INC., OAKLAND  
 CONCORDIA ARGONAUT CLUB, SAN FRANCISCO  
 ENGINEERS CLUB OF SAN FRANCISCO, INC., SAN FRANCISCO  
 THE FAMILY, WOODSIDE  
 THE FAMILY, SAN FRANCISCO  
 FRANCISCA CLUB, SAN FRANCISCO,  
 FRIARS CLUB OF CALIFORNIA, INC., BEVERLY HILLS  
 HILLCREST COUNTRY CLUB, LOS ANGELES  
 HILLSBOROUGH RACQUET CLUB, HILLSBOROUGH  
 JONATHAN CLUB, SANTA MONICA  
 JOHATHAN CLUB, LOS ANGELES  
 LA JOLLA COUNTRY CLUB, INC., LA JOLLA  
 LAGUNITAS COUNTRY CLUB, ROSS  
 LAKESIDE GOLF CLUB OF HOLLYWOOD, NORTH HOLLYWOOD  
 LOS ANGELES CLUB OF THE DEAF, INC., LOS ANGELES  
 LOS ANGELES COUNTRY CLUB, LOS ANGELES  
 LOS ANGELES TENNIS CLUB, LOS ANGELES  
 MARCHE CLUB OF SAN FRANCISCO, INC., SAN FRANCISCO  
 MERCHANTS EXCHANGE CLUB, SAN FRANCISCO  
 METROPOLITAN CLUB, SAN FRANCISCO  
 THE OLYMPIC CLUB, SAN FRANCISCO  
 OVERLAND CLUB, PASADENA  
 THE PACIFIC UNION CLUB, SAN FRANCISCO  
 PRESIDIO GOLF CLUB, SAN FRANCISCO  
 SAN DIEGO YACHT CLUB, INC., SAN DIEGO  
 SAN FRANCISCO CLUB FOR THE DEAF, INC., SAN FRANCISCO  
 SAN FRANCISCO GOLF CLUB LTD., SAN FRANCISCO  
 SAN FRANCISCO YACHT CLUB, SAN FRANCISCO  
 SAN GABRIEL COUNTRY CLUB, SAN GABRIEL  
 SANTA ANA COUNTRY CLUB, INC., SANTA ANA  
 SANTA BARBARA CLUB, SANTA BARBARA  
 ST. CLAIRE CLUB, SAN JOSE  
 STOCK EXCHANGE CLUB OF LOS ANGELES, LOS ANGELES  
 STOCK EXCHANGE LUNCH CLUB, SAN FRANCISCO  
 SUTTER CLUB, SACRAMENTO  
 TAHOE CLUB, AUBURN  
 UNIVERSITY CLUB, SAN FRANCISCO  
 UNIVERSITY CLUB OF LOS ANGELES, LOS ANGELES  
 UNIVERSITY CLUB OF SAN DIEGO, SAN DIEGO

CLUB LIST - AB 2187  
JULY 7, 1987  
PAGE TWO

UNIVERSITY CLUB OF SANTA BARBARA, SANTA BARBARA  
VALLEJO YACHT CLUB, VALLEJO  
THE VALLEY HUNT CLUB, PASADENA  
VICTORIA CLUB, RIVERSIDE  
VIRGINIA COUNTRY CLUB, LONG BEACH  
WILSHIRE COUNTRY CLUB, LOS ANGELES  
WOMENS ATHLETIC CLUB OF ALAMEDA COUNTY, OAKLAND  
YOSEMITE CLUB, STOCKTON

JESS GONZALES  
Staff Attorney  
Department of Fair Employment & Housing

Title II of the Civil Rights Act of 1964 prohibits discrimination in places of public accommodation. However, the Act does not apply to private clubs or other establishments not open to the public. The U.S. Supreme Court has identified some relevant factors to consider when determining whether an establishment is a private club. An establishment is more likely to be considered a private club if there is selective membership; there are well-defined requirements for membership; the members have some control over the admission of new members; the members exercise control over the establishment's operations; there is member-ownership of the establishment; the establishment is not publicly funded; the establishment lacks the attributes of a business; and the establishment limits the use of its facilities to members and bona fide guests.

In a few cases, the Court has applied these factors and determined whether various establishments are private clubs. In Daniel v. Paul, 395 US 298 (1969), the Defendants owned and operated Lake Nixon Club, an amusement area with swimming, boating, sun bathing, picnicking, miniature golf, dancing facilities and a snack bar. They referred to the establishment as a private club and required patrons to pay a 25¢ membership fee for a membership card, which entitled the patron to use the facilities. Blacks were denied admission. The Court held that the Club was not a private club because it operated as a business for profit, lacked the attributes of self-government and member-ownership and was open to the general white public. In Sullivan v. Little Hunting Park, 396 US 229 (1969), the Defendant was a non-stock corporation that operated a playground facility and community park for any white person in the community. A membership share entitled all persons in the immediate family of a shareholder to use the corporation's recreational facilities. The Court held that Little Hunting Park was not a private club because there was no plan or purpose of exclusiveness and was open to any white person in the community. In Moose Lodge v. Iris, 407 US 163 (1972), the Court held that Moose Lodge was a private club because it had well-defined requirements for membership, conducted all of its activities in a building owned by it, was not publicly funded and permitted only members and invited guests in any lodge. In Tillman v. Wheaton-Haven Recreation Association, 410 US 431 (1972), the Defendant operated a community swimming pool whose use was limited to white members and white guests. Membership was keyed to a geographic area within a three-quarter mile radius of the pool. There was a stated maximum number of memberships and an admission requirement of formal board or membership approval. The Court held that the Association was not a private club because membership was open to any white person within the geographic area. In Runyon v. McCrary, 427 US 160 (1976), the Court held that a privately funded, privately managed, commercially operated, nonsectarian school was not a private club because it advertised and offered its services to members of the general public and appealed to parents of all children in the area who could meet the academic and admissions requirements.

In two recent decisions, the Court has addressed the issue of whether the application of a state public accommodation law to compel an association to accept women into membership violates the association members' constitutional

rights of free association. In Roberts v. United States Jaycees, 468 US 609 (1984), the Jaycees did not allow women to become regular members. Two local Minnesota Chapters admitted women as regular members and thus sanctions were imposed and revocation of their charters were considered. Members of the two chapters filed discrimination charges with the Minnesota Department of Human Rights alleging that the exclusion of women from full membership violated the Minnesota Human Rights Act which prohibited discrimination based on sex in public accommodations. A hearing examiner ruled that the Jaycees was a place of public accommodation within the Act and that the Jaycees engaged in an unfair discriminatory practice. The Jaycees then filed a suit in U.S. District Court against state officials to prevent the enforcement of the Act, alleging that application of the Act would violate members' constitutional right of free association. The District court ruled against the Jaycees. The U.S. Court of Appeals reversed and held that application of the Act would produce direct and substantial interference with the Jaycee's freedom of association. The U.S. Supreme Court held that the Constitution protects against unjustified government interference with an individual's choice to enter into and maintain certain private and intimate relationships (freedom of private association), and protects the freedom of individuals to associate for the purpose of engaging in protected activities (freedom of expressive association). In determining whether a particular association is sufficiently intimate or private to warrant constitutional protection, the Court will consider such factors as size, purpose, policies, selectivity, congeniality and whether others are excluded from critical aspects of the relationship. The Court held that application of the Act to compel the Jaycees to accept women does not abridge members' freedom of private association. The Court held that the relationship between members does not warrant protection because local chapters are neither small nor selective, there is no criteria for judging applicants for membership, and many non-members including women, regularly participated in activities central to the formation and maintenance of the association. The Court held that the application of the Act does not impede with members' freedom of expressive association because members will still be able to engage in constitutionally protected activities. Even if the Act infringes on the right of expressive association, the Court held that this is justified by a compelling state interest to eliminate discrimination against women and assure them equal access to the goods, privileges and advantages of places of public accommodation.

In Board of Directors of Rotary International v. Rotary Club of Duarte, 95 L. Ed. 2d 474 (1987), Rotary International (RI) did not allow women to become members, although they were permitted to attend meetings, give speeches, receive awards and form their own associations. Individuals were admitted to membership according to a classification system which ensures that each club includes a representative of every business, professional or institutional activity in the community. The Rotary Club of Duarte (RCD) admitted three women to active membership and so RI revoked RCD's charter and terminated its membership in RI. RCD and two of its female members brought suit in California Superior Court alleging that RI violated the Unruh Civil Rights Act. The Superior Court ruled for RI. The California Court of Appeal reversed finding that RI and RCD are business establishments since "business" embraces everything about which one can be employed, and "establishment" includes a permanent commercial force or organization; that RI is businesslike in that it has a complex structure, large staff and budget and extensive publishing activities; that the business advantages afforded by membership are more than

incidental since business concerns are a motivating factor in joining and business benefits are capitalized upon by members and their businesses or employers; that clubs provide goods, services, and facilities to members since members receive Rotary publications, are entitled to wear and display the Rotary emblem, and may attend conferences on teaching managerial and professional techniques; that admitting women would not interfere with the objectives of RI; and that the policy of excluding women is not protected by the First Amendment. The U.S. Supreme Court applied the same legal principles it used in Roberts to the facts of this case. The Court held that application of the Act to compel Rotary Clubs to accept women does not interfere with members' freedom of private association. The Court held that the relationship between members does not warrant protection because of the potentially large size of the clubs, the high turnover rate among members, the inclusive nature of each club's membership, the public purposes behind the club's service activities, the fact that clubs encourage stranger participation in many activities, and the fact that clubs welcomed media coverage. The Court held that the application of the Act doesn't impede with members' freedom of expressive association because admitting women will not affect the ability of members to carry out protected activities. The Court held that the Act does not require clubs to abandon their activities, goals and admission systems, but in fact, permits them to have an even more representative membership with a broadened capacity for service. Even if the Act infringed on the right of expressive association, the Court held that it would be justified by a compelling state interest to eliminate discrimination against women and assure them equal access to the acquisition of leadership skills, business contacts and tangible goods and services.

The point I am trying to drive at this time, as my Department is concerned with enforcing its mandate, that is to enforce Government Code Section 12948, which incorporates the Unruh Civil Rights Act Section 51. We have taken many complaints, not just employees of clubs; bear in mind that our Department also considers employment discrimination complaints. I'm limiting my presentation here to membership and not the employment practices. I think it is clear now, at least after the Bohemian Club case, that private clubs may not discriminate in their employment practices. For those of you unfamiliar with the Bohemian Club, it is a club out of the City of San Francisco in the Bohemian Grove, which is located in Sonoma County and traditionally, they had discriminated against females in employment. Their argument was one that they had the freedom of association in the Bohemian Grove and, secondly, that the presence of females in the Bohemian Grove would inhibit their ability to relate as men. Men with each other, would inhibit the creative juices...(end of tape)

In the cases that we had, they wanted to be parking lot attendants, cooks, or waitresses; service people, not people who were out there performing theatre, arts and dancing in front of the members, and that's the employment aspect of it.

The membership aspect is more troubling to the Department of Fair Employment and Housing simply because we recognize that there is the right to associate and the freedom of association and the right to choose your own friends and to be with people you want to be with. But if you want to stay a private club, over and beyond governmental regulation like what this Commission is considering today, then you have to stay away from those public subsidies, they have to stay away from the business aspect of the business.

The Unruh Civil Rights Act, in every case that I have read, states that it covers every business establishment of every kind whatsoever and that's pretty broad. The sweep of that statute is entirely broad and you can read in that the Unruh Civil Rights Act covers a lot of the discriminatory practices by private clubs, again, if in their private association they are engaged in business activities.

I'll close by giving you an example of a club in Los Angeles that purports to be a strictly private club where certain members of the movie industry gather and talk about their movies or their creative activity. Okay, that's strictly a private encounter, but they also cut deals there; they cut deals for movies and they cut deals for recording contracts and they cut deals for engaging in political action activity. They are conducting business there, so where do you draw the line? Do you tell them that if you want to be away from the regulation of the City, the County, the State, you have to just go out there and play cards and be friends and that's it, and draw the line. If you do talk business at that club, then you're subject to the regulation of the State, County and City.

One final point, pre-emption. I know the previous speaker mentioned that and I was asking my supervisor about the pre-emption issue. Arguably, an ordinance such as the City's might bring out as against our enforcement of the Unruh Civil Rights Act and it was his opinion as well as my own that, at this point, it does not present a pre-emption problem. The Unruh Civil Rights Act by itself does not have a pre-emption clause. Certain statutes say this law is intended to occupy the field of employment and membership regulation. The Unruh Civil Rights Act does not have such a provision. However, under the Fair Employment and Housing Act, Section 12948, we incorporate the protection of Civil Code Section 51 and then under Section 12993 of the government code, we do have a pre-emption clause that says it is the intent of the legislature that the Fair Employment Housing Act shall occupy the field of regulation in employment and housing discrimination and by virtue of Section 51, public accommodation discrimination.

Just as a recommendation, so long as your ordinance is entirely consistent with the Fair Employment Housing Act and does not go over and beyond the protection already afforded by state law, the ordinance would probably not run afoul of pre-emption, under the pre-emption doctrine.

Commissioner Metrailler: The speaker before indicated that only 75 clubs would be affected by the legislation that has been proposed by Assemblyman Friedman because of the type of license. Why?

Mr. Gonzales: I think he was speaking from the stand point of the Alcohol Beverage Control Act and I think that he was right in that regard. An ordinance such as the proposed ordinance before us and also our regulation of the Fair Employment and Housing Act in Civil Code Section 51, protection would go way beyond the number here. It would cover any private club in the state of California that engages in arbitrary discrimination and is, in fact, a business establishment. I keep using that term over and over again, but business establishments of every kind whatsoever are covered under the Unruh Civil Rights Act. Again, if the club does not want to be regulated, then they should not be business establishments; they should be something else. They should be fraternal groups or something.

Commissioner Metrailler: I guess my question comes because I don't even see the Bohemian Club on his list and that doesn't make any sense to me.

Pat Garrett: I will answer this question for you. The reason is ours [list] is limited to 75 clubs; even all the clubs on the list won't meet the rest of the criteria we developed. We have defined a type of license that has to be held and that is the type 50 license, which, if you look at the thing that the ABC gave you, you will see that Sutter Club is coming under that category. That is not an Article 4 type club, these are not covered under the exemption under Article 4. Most of the clubs that you have on the rest of that list are Article 4 clubs we decided to exclude from our bill, because a lot of them follow the same categories and the same criteria which were just set forth in the Rotary decision by the Supreme Court. We looked at a number of factors, including the fact that a number of these bills had never gotten out of the legislature before. How could we limit it in such a way that it would still do something important--get at the clubs which are more in the public eye, and that is why we limited it. The Bohemian Club is currently under investigation. It had one of the on-sale public licenses that required it to sell to members of the public. They recently exchanged that for a special club license, but they are being investigated.

Question: You were talking about pre-emption between state and local ordinance; what about pre-emption on the current private club exception under the 1964 Civil Rights Act and enforcement of Section 51, which your agency is responsible for?

Mr. Gonzales: You mean in federal pre-emption over state pre-emption? The case that I am aware of is the New York case that is before the U.S. Supreme Court now. We are always subject to a constitutional challenge. We have been able to enforce the Unruh Civil Rights Act as we interpret the Unruh Civil Rights Act in California, but most of the cases that we have followed through an investigation and taken through an administrative hearing have gone all the way to the Superior Court, the California Court of Appeals, the California Supreme Court and into the U.S. Supreme Court. We have not been preempted just yet, but there may come a time that the Court will declare that this enforcement against a private club might be preempted by the U.S. or the Federal Constitution.

Question: Isn't it true that the existence of the current federal private club exemption has inhibited your efforts in prosecuting under Section 51?

Mr. Gonzales: Certainly. We have looked at that Act and we've looked at the coverage of that Act. I still believe that, and it is the opinion of our Department that the Unruh Civil Rights Act has a broad sweep. To answer your question, yes, it has inhibited our enforcement of the Unruh Civil Rights Act because of the Federal law.

Question: How many complaints has your department received against private clubs?

Mr. Gonzales: I would estimate that this year, we have received more than 50 complaints against private clubs. In years past, it is hard to say. It differs between 10 and 40 but, without the full statistical breakdown, I can't tell you how many we have received this year, but there have been a lot.

Question: And that's regarding membership alone?

Mr. Gonzales: Membership and employment. It became a hot issue when the Los Angeles City Council enacted their ordinance, and I think everyone just picked up on that.

Question: Of those complaints, would you say that they came from a particular area, or that they were just all over the State?

Mr. Gonzales: It's hard to say whether they came from a particular area. Our biggest geographical area is the greater Los Angeles area, so you would see more complaints there. And, I believe that there are more private clubs in that area as well, so that's the reason for that.

PROPOSED ORDINANCE PROHIBITING  
DISCRIMINATION BY NOT DISTINCTLY PRIVATE CLUBS

My name is Rita Singer Brandeis. I am the Women's Issues Consultant for the League of Women Voters of Sacramento. As such, I am appearing at this hearing in response to the September 21 letter addressed to our President, Charity Kenyon, from the Chairperson of the Human Rights and Fair Housing Commission. The League of Women Voters has from its inception worked for equal rights for women and minorities, and for social reform in these connections. It has firmly supported equal access to education, employment, and housing, on national, state and local levels. The League will continue to work energetically for the enactment and implementation of laws and regulations that provide legal and economic equality for women and minorities.

The ordinance proposed by Council Member Shore is based on an ordinance recently adopted by Los Angeles and New York. It would bar discrimination by clubs that have more than 400 members, provide regular meal service, and regularly receive dues or similar payments from non-members for business purposes. It is well known that such clubs are often the place where people conduct business transactions and make valuable personal contacts. It is unfortunate that women and minorities have been barred from membership in such clubs. Although there has been an intolerably slow erosion of the limitation in recent years, that process would be speeded up if the city took the proposed action.

The proposal makes unlawful the kind of discrimination described. It permits both the City and private individuals to enforce its provisions by a civil suit to enjoin the practice and to obtain a judgment for damages, including attorneys' fees and court costs. The court could award punitive damages "in a proper case" (not defined). In general, the League supports the enactment of such an ordinance, subject to any legal modification suggested by the City Attorney to whom the ordinance has been submitted for review. Its adoption would surely quicken the pace of eliminating this form of discrimination and would, therefore, be a big plus in the battle for equality for women.

Thank you.

RITA BRANDEIS  
Women's Rights Consultant  
League of Women Voters, Sacramento

Question: Are you aware of any women's organizations in Sacramento County, lets say the City of Sacramento, that would be adversely affected by this ordinance?

Ms. Brandeis: No. I have contacted the other organizations that are appearing today and I believe that we are unified in supporting it, but not in every detail. This is the kind of action which the women feel would be helpful.

Question: Do you know if there are any members of the League of Women Voters that have been discriminated against in their efforts to enter into, or join, any clubs in the City of Sacramento.

Ms. Brandeis: The League of Women Voters has not had such individual complaints, but I am a lawyer, and the Women Lawyers of Sacramento have, and I've noticed that Susan Carlson is going to be speaking and maybe could shed more light on that.

THE SUTTER CLUB

October 20, 1987

Human Rights/Fair Housing Commission  
of the City and County of Sacramento  
2131 Capitol Avenue, Suite 206  
Sacramento, CA 95816

Dear Commissioners:

By this letter we, The Sutter Club, would like to express our opposition to the proposed ordinance prohibiting discrimination by not distinctly private clubs. The Sutter Club, with approximately 800 members, is a bona-fide distinctly private organization dedicated to serving the social purpose of its membership. The Sutter Club's activities are not and have never been commercial and/or corporate.

The proposed ordinance suggests that certain clubs are all important to "commercial market places" or are critical to "business, professional, and/or employment opportunities" or are places where "important business contacts are made" and/or "business transactions are consummated". These assumptions are absolutely erroneous. Neither in operation nor purpose does The Sutter Club encourage such activities. We do not believe there is any credible evidence to support such a claim.

We also understand that some of these legal issues may be decided by the United States Supreme Court as a result of its pending cases. We respectfully request that the Commission table the discussion of this proposed ordinance and/or action relative to the proposed ordinance until such time as the United States Supreme Court has had an opportunity to provide further guidance, particularly in the absence of any compelling or persuasive factual demonstration that the rights of The Sutter Club should be destroyed. We urge that the Commission recommend against this proposed ordinance.

Very truly yours,



Hilton L. Williams  
President, The Sutter Club

MARVIN SHOULTES  
Manager  
The Sutter Club

[Marvin Shoultes, Manager of The Sutter Club, read a statement from Hilton Williams, President of The Sutter Club.]

Commissioner Rosen: Do you mind if I ask some questions?

Mr. Shoultes: [I manage The Sutter Club, I am not in the policy-making position. Anything about The Sutter Club operation not pertaining to policy-making decisions or the policy of the Club, I will be happy to answer. Any questions on the operation, the employees, whatever.]

Commissioner Rosen: What exactly are the criteria for membership, or exclusion?

Mr. Shoultes: This is a policy decision. That is up to the Board; I have no...

Commissioner Rosen: So when you say operation, you mean how much...isn't the operation of the club...

Mr. Shoultes: The employees, anything of that nature, how many meals we serve.

Question: Do you know whether the club is owned by the members itself; is it owned by members?

Mr. Shoultes: Yes, the membership owns the club.

Question: So any questions relating to how one becomes a members is not qualified as operational?

Mr. Shoultes: No, not to me. I do not even attend the meeting of the Credentials Committee/Membership Committee. I've been in this business 35 years; I've always stayed away from attending any meetings having to do with the membership credentials in any club that I managed.

Question: When you speak of the operations?

Mr. Shoultes: I mean the day-to-day operation of the Club. The financial operation of the Club, business operation. The membership matters, those are policy decisions made by the Board of Directors. I have no say in the policy-making decisions whatsoever. I was hired as the Manager of The Sutter Club.

Question: So you are present during the activities at the Club? You make reference in the letter to the assumption that business is not discussed, or consummated, or contacts made, at least when you're there. Are you aware, is there a prohibition against the discussion of business?

Mr. Shoultes: No, I think this is one of the erroneous beliefs that is out there among the general public, that there are business deals, wheeling and dealing, that take place in these private clubs. I have been in 35 years and I have never seen wheeling and dealing. The clubs that I have managed, including The Sutter Club, don't encourage the members to discuss business. It is strictly a social club. You have retired members who come there everyday; you have business members, they bring their associates, their friends, they have lunch. Of course, what is discussed at lunch is the same items that is discussed in a home, in an office, on a golf course, wherever people get together.

Commissioner Rosen: When I'm in my office, I discuss business. I guess I'm not sure what wheeling and dealing would look like. If you would, you know...

Mr. Shoultes: I've heard this term, "wheeling and dealing", so this is why I use the term.

Commissioner Rosen: I don't think the public is interested in making erroneous assumptions. I think they are more interested in learning what goes on in The Sutter Club and if it is indeed the type of discussion that would go on in an office, as you just said, then we have to decide whether we would be recommending to the City Council that such discussion, business discussion, is within the regulation. So we would appreciate your observations.

Mr. Shoultes: The Club itself does not promote any sort or type of business.

Commissioner Rosen: We would like to know if there is a prohibition against discussion of business.

Mr. Shoultes: There is a house rule that states that members are not to take business papers to their table, brief cases, etc.

Commissioner Rosen: Do they have a house rule that prohibits business discussion?

Mr. Shoultes: I really don't see how you can prohibit what is being discussed at a table, but you can prohibit people from taking a brief case, exposing papers, or whatever, at a luncheon table. This is a house rule and our hostesses in both dining rooms enforce this rule.

Question: What other kinds of house rules do they have that are similar to that relating to the issue of the discussion of business, or the transaction of business that would be useful to us. Are there any other house rules?

Mr. Shoultes: I can mail you a copy of the house rules of the Sutter Club, but I don't really know of any house rules.

Commissioner Powers: Policies and procedure is really in the core in what we are really trying to discover here and the letter was really authored by Mr. Williams. Would Mr. Williams be available since your area is obviously in operations? Would Mr. Williams be available to answer some questions for us since that is obviously his area, since he authored the letter?

Mr. Shoultes: I can surely ask Mr. Williams if he would appear before this Commission at some future date.

Question: Could you give us an idea of the number of meals that are served at the Sutter Club? Do you have an idea of what the average daily meals are and the number of employees?

Mr. Shoultes: Yes. Daily meal service we are serving approximately 200 meals per day this time of year, 5 days a week, Monday through Friday. During the holiday season, up until May, that figure jumps to 225-250. We have about 50 employees of The Sutter Club—waitresses, bus people, kitchen, office.

Question: Of those meals, are those lunch and dinner, or...

Mr. Shoultes: No, the Club is open for breakfast and lunch, an average of about 30 breakfasts.

Question: Do you know roughly the volume of people? I'm sure there are people that come there that don't have meals.

Mr. Shoultes: It is basically a luncheon operation, so people who do come in there come for lunch and you have your retired members who come in. They start coming in about 11:00 in the morning, and your retired ones are there to play dominos and Gin Rummy and card games. The people who are entertaining their business associates, their friends, their social friends, they come in about 12:00.

Question: About how many people a day come into the Club?

Mr. Shoultes: The main dining room serves about 75 to 80 lunches a day. The make-up of the main dining room of the guests is, I would say, about 60-40. Sixty male and forty female, percentage-wise.

Question: Can I assume from what you said earlier, that somewhere between 200 and 250 people a day come in and out of The Sutter Club?

Mr. Shoultes: Yes, that is correct. It goes up during and after the holidays. The busy season runs till April/May, then it quiets down during the summer months.

Question: Does it fluctuate at all with the legislature and what's happening then?

Mr. Shoultes: It does to some extent, but not a whole lot really.

Question: How often are the facilities used by other organizations? Is there ever an occasion where The Sutter Club is used by other organizations or groups?

Mr. Shoultes: No, not really. All functions have to be sponsored by a member of the Club. There have been a few occasions where I have permitted other civic organizations to come in there at a reduced fee or the same charge that we would charge for another group. I do feel that The Sutter Club has a responsibility to the community, not only to the members, but to the community

itself. For this reason, I have. It is not a policy of the Board, it is not a policy I have discussed with the Board.

Question: As far as staff women and minorities, what is their mix percentage?

Mr. Shoultes: We have more female than male; I would say about 30 female and 20 male.

Question: What is the racial mix?

Mr. Shoultes: I have 3 employees, colored employees; I have Spanish employees; must be about 7 or 8.

Question: Do you have any Asian employees?

Mr. Shoultes: Oh yes, yes we do. We have Asian employees, one.

Commissioner Powers: Is the facility itself wheelchair accessible?

Mr. Shoultes: It is not handicap accessible. We do make arrangements. There are steps, you do have to use steps; there is a way up through the freight elevator, which gives people access to all areas. Otherwise, there is none.

Question: As regards to employees, do they have to be relatives of the members of the Sutter Club?

Mr. Shoultes: No. As a Manager of The Sutter Club, I don't want employees who are related to members of the Club. It would create problems with the management. I do report to the Board of Directors, mostly the financial report. I do attend Board meetings and report as Manager on any problems I feel the Board needs to know.

Question: You indicated that you give a financial report to the Board of Directors; is that on the operating expenses of the Club?

Mr. Shoultes: Yes, that is correct.

Question: Could you share with us, what the operating expenses are for the Club?

Mr. Shoultes: I really don't understand that question--the operating expenses?

Question: In terms of you monthly expenses, is that a monthly financial statement?

Mr. Shoultes: Yes, a monthly financial statement.

Question: In other words, does the Club make a profit?

Mr. Shoultes: The Club charges an initiation fee for the new members and it also charges monthly dues. And by using the dues to off-set the expenses, the Club does make a profit, yes.

Question: Could you give us the amount of the initiation fee and/or the membership dues?

Mr. Shoultes: I think that is public knowledge; the membership fee is \$2,750 and that is for a Senior Membership over the age of 35. There is a lesser fee; I believe 30-35 is \$2,000. I believe it's \$1,500 for 21-29 and the dues are \$65.00 per month.

Question: The membership fees go to off-set operating expenses?

Mr. Shoultes: That is correct, yes.

Question: You, when we were talking about the racial mix of employees of the club, you indicated that there were probably about 7 or 8 Spanish employees?

Mr. Shoultes: Yes. I could probably take a minute and confirm that figure.

Question: You also indicated that there were three colored employees; could you describe what you mean by "colored"?

Mr. Shoultes: What they do?

Question: I wanted to separate what you meant by colored; Black/White?

Mr. Shoultes: No, Black.

TESTIMONY BEFORE THE HUMAN RIGHTS/FAIR HOUSING COMMISSION  
OF THE CITY AND COUNTY OF SACRAMENTO:

Barbara E. Thalacker, Ed.D.  
Executive Director

Board of Directors

- Sherilyn Ferguson, President
- Patricia Adelekan
- Doris V. Alexis
- Gioriette Beck
- Mary Bibo
- Patricia Cade
- Joanne Casarez
- Catherine D'Arezzo
- Lorraine Emery
- Ann Freers
- Martha Glass
- Ada Hamilton
- Melody Harding
- Sharyn Kaplan
- Jo Lowe
- MaryEtta Marks
- Mary Anne Piefka-Weir
- Ann Reed
- Joan Reynolds
- Ira Russell
- Lisa Stanley
- Cheryl Turpin
- Raquel Vega-Vierra
- Virginia Verspoor
- Nancy Yilk

OCTOBER 22, 1987

Good afternoon. My name is Barbara Thalacker, Executive Director of the Sacramento YWCA.

The YWCA has served Sacramento since 1981 in programs such as pre-employment training and placement of women and men re-entering the work force, nutrition education and food vouchers for low income women and education and support for pregnant and parenting teens. We also provide a thirty bed residence, education and self-help for people in the homeless shelter and special programs for the blind, hearing impaired, arthritics and those recovering from breast cancer and heart surgery.

In 1970, at the National Convention, the YWCA of the U.S.A. adopted our One Imperative, "the elimination of racism wherever it exists and by any means necessary." Since the beginning, YWCAs throughout the world have worked to eliminate all of the "isms" - sexism, handicappism, ageism, racism and eliteism.

Consideration of an issue related to exclusion in business must include consideration of the viability of any exclusion. Those who would scoff and say the exclusion to socialize in "private" clubs should remain the rights of the members sound a bit like the boys only tree houses or the whites only outhouses of our nation's past. But we are not talking here of a social club. Tax deductions are not taken for tree house memberships and business events don't rent space there. We are speaking of clubs where business is conducted regularly and where careers are begun, developed and fostered.

Historically certain clubs in Sacramento solicited membership from elected and appointed officials. Historically a well known department store chain provided membership for its Chief Executive Officer. The intention of both of these was to develop relationships useful to the conduct of business. When women entered these formerly male bastions of power, the practice changed. Is this anything but outright discrimination?

It is to be granted that women, minorities, people of differing religions, sexual orientation, age and ancestry have made strides in areas formerly excluded such as land ownership and voting rights. That does not negate the need, yes, the mandate to continue to uncover and remove the more subtle forms of discrimination. If those in power who exclude those who are different would reflect for a moment on an exchange of position the approach would be clear.

- Ad Board
- James Berger, Chair
- Elia Benvenuti
- Lou Burnett
- Peter Cannon
- Mark Cohn
- Gene Cole
- Glen Craig
- March Fong Eu
- Vic Fazo
- Steven Fishbein
- Joe S. Gray
- Deanna Hanson
- Diane Hazelroth
- Gary Hill
- Muriel Johnson
- Oleta Lambert
- Keith T. Larick
- Ann Levine
- Paul Lyons
- Alice Lytle
- Gala Mace
- Hazel W. Mahone
- Catherine McMillan
- Richard B. Nelson
- Lynn Robie
- Anne Rudin
- Dave Shore
- Eugene Spencer
- Trisha Stanionis
- Brian Van Camp
- Frank R.J. Whittaker

1122 17th Street  
Sacramento, CA 95814  
916/442-4741

When a friend of mine asked what difference it made if the generic "he" were used to define all people, I asked him for just such a reflection. If it truly doesn't matter then the use of the term "womankind" to apply to all people should be acceptable for the next 2000 years. Think about it. If it truly doesn't matter then it should be acceptable to allow a men's day at the private country club only on Tuesdays with men allowed only in the company of women on other days. If it truly doesn't matter and if social events are the only events happening at private clubs then there would be no justification for the deductibility of business expenses.

There was a time when men were uncomfortable working beside women, a time when a woman as CEO, as boss, as bank president, as power-broker was avoided. We have learned to begin to work together and where rights are still denied, where the balance is inequitable as in the cases of sexual harassment, the situation is justifiably legislated. No one presumes to dictate how we spend our personal and social time. However, if business is conducted while a major part of the business population is excluded legislation may also be needed in this instance to achieve equity. To borrow a phrase, we've come a long way, maybe, and still a journey to go.

Thank you.

BARBARA THALACKER  
Executive Director  
Y.W.C.A.

Question: Are you aware of any discrimination from clubs here in Sacramento?

Ms. Thalacker: We know that there are people that have been specifically excluded from those clubs for membership, certainly. There is a litany of names. The papers did a good job of listing some of those women and certainly not all of them. Some of those women who have approached the bastion of power have not been willing to jeopardize their businesses, many of them small business owners, some of them not willing to jeopardize their position in their own firms, so they will not openly protest, justifiably so I think, yet fight that. Some people are willing to "fight" and come out of the closet on that issue, and some are economically afraid to.

Question: To take on the Sutter Club?

Ms. Thalacker: Yes. There are people we know. We also have a list of people within the Sutter Club who are absolutely in favor of this change. These are people, men, who think the dinosaur age is over and we need to drag them kicking and screaming into the Twentieth Century. Now, if it were a social club, if it were a tree-house, I don't think you would see people willing to stand up and say this. I socialize with whom I wish and so may they. I know of two instances—I hate to go on record without being able to cite chapter and verse, but under the circumstances, I will not. I know of instances where a follow-up job interview was done at a corner table, and where the sale of business property was begun at that meeting; it was a table for three. I know of those two instances. So the gentlemen who said that conduct is prohibited. Yes, the signing of papers for that property did not take place in the Sutter Club dining room, to my knowledge, but the definition of those people who are willing to speak up, you will get affirmation of the fact that there is business conducted there and certainly relationships made. It's the same thing on Tuesdays at one of the golf courses.

Question: You mentioned a tradition of some local clubs to recruit CEO's of major companies in Sacramento and that this tradition was ended.

Ms. Thalacker: Let me say it a different way. This particular department store chain had a male CEO in the position for years and the company did pay that person's membership. When a woman became the CEO of the company, that membership was gone. The company had no problem paying—the company was willing to do that.

Question: But the woman was not permitted to belong to the club?

Ms. Thalacker: Yes.

Question: This particular corporation thought it was important enough for its business interests to pay \$2,950, plus \$65 a month?

Ms. Thalacker: Plus the cost of the lunches.

Question: Is there a particular person at the YWCA that our staff could talk with to get these instances and examples, understanding that the person remain anonymous?

Ms. Thalacker: You could come to me. Another issue that has come up because the YWCA only has women on the board and a women in the executive position only [kind of a "how can you stand and say...when]. There are a couple of answers to the questions that I raised. First of all, we are exempt under Title 9 of the Education Act of 1972, as are YMCA, Girl Scouts, Boy Scouts and a couple of others. We are incorporated under the state laws of New York and are a national organization, as all of those others are. We are one of the only that exclude in that manner; it relates to the over-coming of the effects of past discrimination, the fact that it is a leadership development program of the YWCA. It is however at this time, being debated at the national level, and I expect to see a possible change in the future and I wanted to make that point.

Lester Riggins  
Member Executive Board  
Sacramento Urban League  
Chairman - Issues and Adovacy Committee

Testimony - Issue:

"Clubs that Discriminate in Membership (on the basis of sex, race, color, religion, ancestry, national origin, sexual orientation, or physical handicap) and "Where Business is Frequently Conducted".

We support the "Ordinance Prohibiting Discrimination by not Distinctly Private Clubs."

Racism continues to live on despite the pious pronouncements that we are now a color blind society. The passage of the Civil rights laws in the sixties afford us personal freedom but not economic freedom. The nations in recent years allows to continue racism and racial disadvantage that permeate our society and degrade national life and aspirations. It can be seen in the daily drumfire of local reports about racially inspired outrages that show old forms of racism thriving alongside the more subtle forms of discrimination that has become more popular.

Failure to allow minorities (Blacks) to participate in various clubs and organizations that meet regularly and during the process conduct business that results in substantial financial gains to their members is a subtle form of discrimination.

The outward display of housing discrimination is commonplace , as has been documented time and time again but the subtle economic discrimination that results from the exclusion of minorities in the participation of the clubs that often times meet during the day and are composed of the leading figures in government, public and private institutions and organizations is ignored.

The last few years have witnessed a shift in values from traditional ones that stressed opportunity, compassion, and equality - to today's new era of selfishness, hostility to the poor, and indifferences to inequality.

The obtaining of Economic equality is the last stage in freedom for Blacks and other minorities. Private clubs afford their members a definite advantage for economic gains among their membership.

The economic condition of Blacks in this nation has created a crisis in the Black family life. Prominent among them:

1. Poverty is once again a prominent feature of Afro-American life effectively undercutting the struggle for stability.
2. High unemployment continues to plague the black family.
3. Low family income among employed Blacks continues its downward drift.
4. Family structure has undergone dramatic changes in recent years.
5. Teenage pregnancy is a major problem in the black community.
6. The underclass is alive but not at all well in Black America.
7. Inadequate housing in the Black community.
8. Black American families suffer greater health hazards and receive less adequate health care.
9. Prisons a Black warehouse.
10. Black students once again dropping out of school in alarming numbers.

In Conclusion:

Racism in any of its invidious forms, exacts a toll on those who practice it, those who tolerate it, and those who suffer from it.

We call upon our national leadership, in both public and private domain, to repudiate racism as a tolerable element within our country's moral fiber and to condemn discriminating, acts, practices and attitudes that serve to degrade our image as a land of freedom, justice and opportunity.

This ordinance will allow full participation of everyone in our society based on their ability and economics.

exempts taken from: The State of Black America 1987

published by National Urban League, Inc.

WILL BUSH  
Director, Taxpayer Information Systems  
Franchise Tax Board

Mr. Chairman, members of the Commission, I am Will Bush, Director of Information Systems of the Franchise Tax Board. I am currently beginning implementation of the recently adopted regulations by the Franchise Tax Board pertaining to disallowance of deductions from payments to clubs which discriminate. Conway Collis, a Board Member who brought this issue before the Franchise Tax Board, had hoped to be here to speak today, but unfortunately, he couldn't make it.

This year, Mr. Collis proposed regulations, which the Franchise Tax Board adopted for both personal income tax law and bank and corporate tax law, which disallows any deductions for expenses incurred in clubs which discriminate. Specifically, Sections 17201 and 24333 of Title 18 of the California Administrative Code, and I would like to read.

"On or after January 1, 1988, business expense tax deductions will no longer be allowed with respect to payments to a club which restricts membership on the use of its services or facilities on the basis of age, sex, race, religion, color, ancestry, or national origin. Clubs (it further goes on to define) means a club as defined in Article 4, commencing with Section 23425 of Chapter 3 of Division 9 of the Business and Professions Code."

In a nutshell, essentially what this means is that, members of clubs which discriminate will no longer be able to deduct membership dues or expenses incurred in these clubs on either corporate or personal income tax returns. These regulations were adopted in September. As such, we are in the initial stages of implementation planning. Although some of our ideas are still in their infant state, we may or may not do them. I would like to share some of our thoughts in this specific area, that of enforcement and public education. In the area of enforcement, currently, we are trying to identify the universe or numbers of private clubs right now. We are starting off with those that we can identify rather easily, those with liquor licenses and quite probably those who serve meals where a large portion of expenses are incurred that are deducted as business expenses on returns. And, we are currently in the process of obtaining a list from the ABC. We have been working with Ken Byers, who was here earlier, and I understand we now have a listing from them which we will begin to work through. In addition, we are looking at our exempt organization files to identify other clubs which may not have liquor licenses, but where members may be claiming expenses for business purposes. In addition, we may be contacting various clubs and associations for their membership lists. Once we have, or have identified, the universe of clubs, we will quite probably be asking for information to make a determination as to which clubs discriminate. What we will be looking for are things in their by-laws and their articles and we will quite probably be giving them or sending them a list of questions looking at their actual practices: Are women and minorities afforded full benefits of membership and access to club facilities. If the information is not sufficient to make a determination, then our legal staff has also informed us that we can ask for membership lists and/or ethnic background of members. We will then make a review and determination as to whether the club

discriminates, either through admission by the club, quite possibly through an administrative hearing, which we have not yet developed procedures, or through a court or investigative determination, quite possibly through the Attorney General, Alcoholic Beverage Control Board, or quite possibly through local determinations, which may be made as a result of ordinances such as New York City and Los Angeles. Then, we will probably be developing a list of organizations for use by our audit staff when auditing corporate and individual tax returns.

In the area of public education, we have already started. We have included information in individual tax returns, which alerts the public that after January 1, 1988, these expenses are no longer deductible. In addition, we will be sending an informational letter to all clubs that we identify informing them of the new regulation and its impact. We will be informing the various tax preparers of the new tax regulation through Tax News, our tax newsletter that goes out to roughly 30,000 individuals throughout California. We will be contacting the California Society of Certified Public Accountants and the State Bar with information on the new regulations and hope to get articles in their various publications. And, we will be including information with our various filing season news releases. As I said earlier, many of these ideas are in their infancy stages and we are currently working with the staff and our audit, legal and public affairs division to develop these areas along with the schedule of implementation of this regulation. Essentially, the regulation, as I said, goes into effect January 1, 1988. It is for returns for the 1988 calendar year and, as such, we will probably begin to enforce the regulation in early 1989 when those returns are filed. If you have any questions, I will be happy to answer them.

Question: Have there been any other precedents in other states regarding such action, and have there been any appeals.

Mr. Bush: There have been none that I am aware of and we are quite probably the first.

Question: It's an interesting challenge. It starts out backwards. It comes in on a tax return, \$506 of business expense deduction, I take it. If you are going to be doing an audit of a taxpayer, then one of the issues that you might be looking at would be club memberships? Do you really have the power to require that private clubs give you their membership lists?

Mr. Bush: The Franchise Tax Board does have rather broad subpoena powers. As such, our legal staff tells us that we do have the power to request that information. Quite probably, much of this will be tested and we will probably not see a test of this until early 1989, when we begin looking at that. One of the other suggestions that our staff members made is that quite possibly, we could put something on the returns so that people who claim business expense deductions would sign under penalty of perjury that these were with clubs that did not discriminate. So we are looking not only at an enforcement program, but also a self-compliance-type program.

Question: Would this ordinance interfere with, or enhance, your work in any way?

Mr. Bush: The ordinance would quite probably help us in that regard.

Question: The requirement that the club not discriminate, does that not also go into effect until 1988? In other words, for people belonging to The Sutter Club deducting their 1988 dues, if The Sutter Club changed their policy and did not discriminate before December 31, 1987, it would be okay to deduct the dues paid to it?

Mr. Bush: Yes, if they changed their practices beginning sometime in 1987, then after January 1, 1988, all dues and expenses would be deductible if they were for business purposes. Again, that's the other thing, just because expenses were incurred, a person still has to show that they were for business purposes.

AMY KING  
Legislative Assistant to  
Assemblywoman Gwen Moore

Good afternoon, I am here for Assemblywoman Gwen Moore, who is this afternoon, conducting a hearing of her Utilities and Commerce Committee, which she Chairs, on the issue of public utilities hiring and procurement practices, undoubtedly that would be of interest to you also. You have just mentioned your staff, I also want to mention your staff. We very much appreciate the Commission staff's assistance, not only with passage of Assemblywoman Moore's AB 239 of which I'm going to talk, but also in developing legislation dealing with anti-hate crime centers, which we expect to move ahead next year. It's now in the Senate, having passed the Assembly. So thank you very much for your help. Assemblywoman Gwen Moore is the author of AB 239, which is newly-enacted legislation relating to private clubs. I noticed your hand-out, which I just got a few minutes ago, that you have a couple of focuses for your hearing. I think, probably, I'm going to be addressing 2 and 3, which agency is addressing the problems (the State Legislature) and 3, what approaches are viewed as most viable. I can tell you about the approach that has proved most viable for Assemblywoman Moore.

AB 239 prohibits tax deductions for business expenses at private clubs which discriminate in membership or services on various basis. It, and various measures that Assemblywoman Moore has carried in the last eight years, was a precursor of the Franchise Tax Board regulation about which Mr. Bush just spoke. Given the adoption of the Franchise Tax Board regulations, Assemblywoman Moore has been asked on several occasions why she pursued her legislation, since it is very similar to the Franchise Tax Board action. Her response has been multi-fold. First, she believes that the legislation strengthens the regulatory action by placing the policy in our tax law. I would assume that the members of the Franchise Tax Board agree with her since back in the Spring, all three members of the Franchise Tax Board voted to support her legislation. In addition, since the Franchise Tax Board regulations were adopted with only two votes instead of the ...(end of tape).

You asked Mr. Bush a question awhile ago, I believe Ms. Rosen, about The Sutter Club. Well, unlike the Franchise Tax Board regulations, which arguably may not affect The Sutter Club, we feel that AB 239 will definitely affect it. The Franchise Tax Board regulations apply only to clubs defined in Article 4, Division 9 of the Business and Professions Code. AB 239 applies to all of the clubs defined or licensed in Division 9. The affect of this difference is that AB 239 will apply to tax deductions for expenses at clubs such as The Sutter Club in Sacramento and the Bohemian Club in San Francisco, which are defined and have chosen by the Beverage Control Department pursuant to other parts of the division under which, by the way, these clubs are already prohibited from discrimination under Section 125.6 of the Business and Professions Code. AB 239 also not only prohibits deductions, but requires licensees of the ABC to state on their receipts that expenses covered by them are not deductible, so they will have adequate for-warning before they file their tax returns.

Further, AB 239 exempts national fraternal organizations from its provisions and has a delayed implementation date of 1990. The purpose of AB 239 is to bring California's tax laws into conformity with its anti-discrimination policy. Assemblywoman Moore has long contended, and obviously the legislature now agrees, that where the State allows tax deductions for business expenses in connection with discriminatory private clubs it, in effect, subsidizes discrimination. AB 239 therefore removes the discrimination, but it does not, as some people allege, infringe upon the constitutional rights of any club member or club. It does not require any club to change its membership policies. It does not require them to change their practices. It leaves clubs free to continue to conduct business as usual, while freeing taxpayers and those who would not be welcome at such clubs from paying for the clubs' private aversions. While AB 239 does not require changes in the membership or admission, it is hoped that these will occur.

As your other speakers have mentioned, it is well-recognized that clubs are used for the conduct of business, for cementing business relationships and developing a network for career advancement. Just an illustration of this; one of the letters we received a few years ago which was from a woman executive in San Francisco. She had just been promoted within her organization and her colleagues decided to take her to lunch at a private club in celebration. This private club did, on some days, allow women but it just so happens that this was not one of those days and this woman felt humiliated in front of people with whom she was going to be conducting business on a regular basis. She felt that it presented a severe disadvantage for her. Another instance, the head of CAPSCO Corporation in Silicon Valley, a woman whose name is Billie, was invited to participate in a golf tournament. When she arrived, with her subordinates in tow, she was told that women were not welcome to participate in this event. Naturally, I think that that sort of behavior reinforces the negative stereotypes that people sometimes have of women and minorities.

The fact that businesses argue that clubs are used for the conduct of business is recognized by the fact that memberships and expenses in connection with clubs are paid for or reimbursed by businesses. It has also been evidenced by members taking deductions which are permitted under California and Federal law only when the principal purpose for the expenses are business related. And it is recognized that persons who are unable to compete in these market places are economically, as well as otherwise, at a disadvantage. I believe that the approval of Assemblywoman Moore's AB 239 by the legislature on a very strong by-partisan vote demonstrates that the State is determined, at the very least, to remove the burden of a tax subsidy for clubs from the taxpayers, many of whom are unable to participate in these private clubs. I did not bring any written testimony or any written documents, but we do have files dating back at least nine years and we would be glad to make those assessable to the Commission's staff. In addition, I would be happy to try to answer any questions that you may have with regard to Assemblywoman Moore's legislation.

Question: Did I hear you correctly, that the legislation will require private clubs to actually state on their receipts that this is not a tax deduction?

Ms. King: Which discriminates, right.

Question: And that goes into effect on January 1?

Ms. King: The bill takes affect January 1, but has a delayed implementation date of 1990.

Question: Was this a compromise to get it passed?

Ms. King: Yes, and it is a commitment that Assemblywoman Moore made several years ago, prior to the time that the Franchise Tax Board entered into its regulatory process.

Question: In the proposed bill that goes into effect, were there any analysis of the bill? Is there any reviewing, any special exemption, any possibilities of circumvention of that new legislation? Are there areas where a business or club could get a special exemption that would remove them from what the bill intends to do?

Ms. King: The measure itself only indirectly affects the clubs. The deduction is prohibited for businesses who pay for memberships or expenses and for individuals so it won't affect the clubs in that way. I'm not sure I'm answering your question.

Question: I was just wondering if there would be any avenues to circumvent, or avenues to gain deductions--special exemptions.

Ms. King: I wouldn't say that I perceive any exemptions, but I do perceive persons somehow escaping the law. As I mentioned, under existing law in the Business Professions Code 125.6, which Assemblywoman Julia Dixon authored in 1964 and preceded Assemblywoman Moore in working on this issue, which says that licensees of the state are prohibited from discriminating, however, private clubs licensed under Article 4 are exempted from liability under this section for its violation. I understand that Mr. Byers has already spoken and Mr. Bush has alluded to the fact that they are getting a list now of clubs that discriminate. Apparently, not always have the records been kept in such a way that you could tell which types of clubs discriminate and which don't. One of the reasons, I think, for this is the fact that, historically, there have been a number of clubs that have not been prohibited from discriminating, but since 1976, most of the types of clubs authorized for licensure by the ABC have been prohibited from discriminating as a condition of being licensed by the ABC. So, because of a lot of factors, I suppose that where there's a will, there's a way.

Question: You mentioned exemption of national fraternal organizations.

Ms. King: These are exempted from the provisions of the legislation. Part of the reason is political; the measure was amended in the Senate to exclude them. However, I should point out that earlier versions of the bill excluded them for the reason that most of the complaints we received have not been in connection with those types of clubs, like Elks and Moose, and it is felt that's not where the greatest deductions have been taken.

Question: Are there studies that show where the greatest deductions have been taken?

Ms. King: No, that's very difficult to determine.

AMENDED IN SENATE SEPTEMBER 8, 1987

AMENDED IN SENATE AUGUST 25, 1987

AMENDED IN ASSEMBLY MAY 26, 1987

AMENDED IN ASSEMBLY MAY 11, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 239**

Introduced by Assembly Members Moore, Bates, Eastin,  
Friedman, Hannigan, Harris, Hayden, Hughes, Killen,  
Mojonnier, Tanner, Vasconcellos, and Maxine Waters  
(Coauthors: Senators Bergeson, Morgan, and Watson)

January 12, 1987

An act to add Section 23438 to the Business and Professions Code, and to add Sections 17269 and 24343.2 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 239, as amended, Moore. Taxation: disallowance of deductions: ordinary and necessary business expenses.

Existing Personal Income Tax Law and Bank and Corporation Tax Law allows a deduction from gross income for ordinary and necessary expenses paid or incurred in carrying on any trade or business.

This bill would disallow a deduction for expenses, as defined, incurred by a taxpayer in connection with a club, as defined, which restricts membership or the use of its services or facilities on the basis of age, sex, race, religion, color, ancestry, or national origin.

Existing provisions of the Alcoholic Beverage Control Act provide that any violation of any provision of the act for which

another penalty is not specifically provided in the act is a misdemeanor.

This bill would add to that act a requirement that a club licensee, as defined, which discriminates, as specified, provide on each receipt furnished to a taxpayer a printed statement stating that expenditures covered by the receipt are nondeductible. This bill would, therefore, mandate a new program or higher level of service on local government by creating a new crime for a failure to provide the required receipt.

This bill would declare that it is not intended to affect the tax-exempt status of any church or other organization which is exempt from taxation under specified provisions of the Bank and Corporation Tax Law.

This bill would declare that it is not intended that any inference be drawn as the result of the bill's enactment that the Legislature intended to preclude the adoption of administrative regulations by the Franchise Tax Board which disallow business deductions on public policy grounds with respect to expenses incurred before the bill's operative date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy. However, its provisions would apply to the computation of taxes for taxable and income years commencing on and after January 1, 1990.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23438 is added to the Business  
2 and Professions Code, to read:

3 23438. (a) Any alcoholic beverage club licensee  
4 which restricts membership or the use of its services or  
5 facilities on the basis of age, sex, race, religion, color,

1 ancestry, or national origin shall, when issuing a receipt  
2 for expenses which may otherwise be used by taxpayers  
3 for deduction purposes pursuant to Section 162(a) of the  
4 Internal Revenue Code, for purposes of the Personal  
5 Income Tax Law, or Section 24343 of the Revenue and  
6 Taxation Code, for purposes of the Bank and Corporation  
7 Tax Law, incorporate a printed statement on the receipt  
8 as follows:

9 "The expenditures covered by this receipt are  
10 nondeductible for state income tax purposes or franchise  
11 tax purposes."

12 (b) For purposes of this section, the following terms  
13 have the following meanings:

14 (1) "Expenses" means expenses, as defined in Section  
15 17269 or 24343.2 of the Revenue and Taxation Code.

16 (2) "Club" means a club holding an alcoholic  
17 beverage license pursuant to the provisions of this  
18 division, except a club holding an alcoholic beverage  
19 license pursuant to Section 23425.

20 SEC. 2. Section 17269 is added to the Revenue and  
21 Taxation Code, to read:

22 17269. Whereas, the people of the State of California  
23 desire to promote and achieve tax equity and fairness  
24 among all the state's citizens and further desire to  
25 conform to the public policy of nondiscrimination, the  
26 Legislature hereby enacts the following for these reasons  
27 and for no other purpose:

28 (a) The provisions of Section 162(a) of the Internal  
29 Revenue Code shall not be applicable to expenses  
30 incurred by a taxpayer with respect to expenditures  
31 made at, or payments made to, a club which restricts  
32 membership or the use of its services or facilities on the  
33 basis of age, sex, race, religion, color, ancestry, or national  
34 origin.

35 (b) A club described in subdivision (a) holding an  
36 alcoholic beverage license pursuant to Division 9  
37 (commencing with Section 23000) of the Business and  
38 Professions Code, except a club holding an alcoholic  
39 beverage license pursuant to Section 23425 thereof, shall  
40 provide on each receipt furnished to a taxpayer a printed

1 statement as follows:

2 "The expenditures covered by this receipt are  
3 nondeductible for state income tax purposes or franchise  
4 tax purposes."

5 (c) For purposes of this section:

6 (1) "Expenses" means those expenses otherwise  
7 deductible under Section 162(a) of the Internal Revenue  
8 Code, except for subdivision (a), and includes, but is not  
9 limited to, club membership dues and assessments, food  
10 and beverage expenses, expenses for services furnished  
11 by the club, and reimbursements or salary adjustments to  
12 officers or employees for any of the preceding expenses.

13 (2) "Club" means a club as defined in Division 9  
14 (commencing with Section 23000) of the Business and  
15 Professions Code, *except a club as defined in Section*  
16 *23425 thereof.*

17 SEC. 3. Section 24343.2 is added to the Revenue and  
18 Taxation Code, to read:

19 24343.2. Whereas, the people of the State of California  
20 desire to promote and achieve tax equity and fairness  
21 among all the state's citizens and further desire to  
22 conform to the public policy of nondiscrimination, the  
23 Legislature hereby enacts the following for these reasons  
24 and for no other purpose:

25 (a) No deduction shall be allowed under Section 24343  
26 for expenses incurred by a taxpayer with respect to  
27 expenditures made at, or payments made to, a club which  
28 restricts membership or the use of its services or facilities  
29 on the basis of age, sex, race, religion, color, ancestry, or  
30 national origin.

31 (b) A club described in subdivision (a) holding an  
32 alcoholic beverage license pursuant to Division 9  
33 (commencing with Section 23000) of the Business and  
34 Professions Code, *except a club holding an alcoholic*  
35 *beverage license pursuant to Section 23425 thereof*, shall  
36 provide on each receipt furnished to a taxpayer a printed  
37 statement as follows:

38 "The expenditures covered by this receipt are  
39 nondeductible for state income tax purposes or franchise  
40 tax purposes."

1 (c) For purposes of this section:

2 (1) "Expenses" means those expenses otherwise  
3 deductible under Section 24343, except for subdivision  
4 (a), and includes, but is not limited to, club membership  
5 dues and assessments, food and beverage expenses,  
6 expenses for services furnished by the club, and  
7 reimbursements or salary adjustments to officers or  
8 employees for any of the preceding expenses.

9 (2) "Club" means a club as defined in Division 9  
10 (commencing with Section 23000) of the Business and  
11 Professions Code, *except a club as defined in Section*  
12 *23425 thereof.*

13 SEC. 4. This act is not intended to affect the tax  
14 exempt status of any church or other organization which  
15 is exempt from taxation under Section 23701d of the  
16 Revenue and Taxation Code.

17 SEC. 5. It is not intended that any inference be drawn  
18 as the result of the enactment of this act that the  
19 Legislature intended to preclude administrative  
20 regulations by the Franchise Tax Board which disallow  
21 business deductions on public policy grounds with  
22 respect to expenses incurred before the operative date of  
23 this act. However, as of the operative date of this act, any  
24 administrative regulations adopted by the Franchise Tax  
25 Board which are inconsistent with or contrary to this act  
26 shall be of no further force or effect.

27 SEC. 6. No reimbursement is required by this act  
28 pursuant to Section 6 of Article XIII B of the California  
29 Constitution because the only costs which may be  
30 incurred by a local agency or school district will be  
31 incurred because this act creates a new crime or  
32 infraction, changes the definition of a crime or infraction,  
33 changes the penalty for a crime or infraction, or  
34 eliminates a crime or infraction.

35 SEC. 7. This act provides for a tax levy within the  
36 meaning of Article IV of the Constitution and shall go into  
37 immediate effect. However, the provisions of this act  
38 shall be applied in the computation of taxes for taxable or  
39 income years commencing on or after January 1, 1990.

MARCY VIRAGO  
President, Sacramento Chapter  
National Organization of Women

I am the President of the local chapter of NOW. 550 women and men belong to our chapter, and the purpose of NOW is to include women in the mainstream of society of America and to ensure that women receive equality of rights. On May 4, 1987, the U.S. Supreme Court voted unanimously 7 to 0 that Rotary Club International must abide by the Unruh Civil Rights Act of California law, which bans discrimination based on race, sex, religion, or national origin. According to the decision, the Rotary Club is prohibited from discriminating in its membership policy because it carries out community service in the public eye and provides a network of contacts for business people. This decision was a narrow interpretation of the law and does not apply in general to all desegregation cases.

NOW believes there is a need to end discrimination based on sex that exists in clubs that are not distinctly private. It is clear that invaluable business networking takes place in such clubs and we feel that women as well as men should have the opportunity to take advantage of membership in such clubs and pursue business contacts in such an environment.

As Ms. King stated earlier, NOW is lobbying for two bills before the state legislature and Ms. King just elaborated on AB 239 sponsored by Gwen Moore. This would disallow tax deductions for expenses incurred in clubs which discriminate on the basis of sex, age, race, religion, or national origin in membership or services. The bill would apply to private clubs with liquor licenses. Another bill, AB 2187, also targets the discriminatory policies of private clubs. Proposed by Assemblymember Freidman, it prohibits the issuance or renewal of liquor licenses to clubs that discriminate. The effects of this bill would be felt most immediately since liquor licenses must be renewed annually. Clubs would be forced to open up their membership, or no longer serve alcohol. As Mr. Bush had stated earlier, the Franchise Tax Board has adopted Regulation 17201 earlier this month, which like Assemblymember Moore's bill, disallows state tax deductions for expenses incurred in clubs which discriminate. This regulation was supported by two of the three board members with Jesse Ruff, Governor Deukmejian's representative, on the board abstaining. Regulation 17201 will go into effect January 1, 1988. Proponents argue that AB 239 is needed to give the new administrative ruling the force of law. Some people have questioned the legality of forcing clubs to extend their membership to women. The Attorney General has indicated that he believes the suggested reforms are constitutional. Further, he has issued a formal opinion, which states that alcohol beverage control has the authority to revoke the licenses of private clubs which discriminate. NOW supports all of the proposed reforms because they would be helpful in ending discrimination. They all target slightly different areas of club finances and jointly would put extreme pressure on private clubs to democratize their membership policies.

Question: Are you aware, in your membership of over 550 people, have you heard of any instances of where individuals in Sacramento have been denied membership or entrance to clubs and feel that this has acted adversely on their ability to make business deals, or get jobs, or whatever?

Ms. Virago: Yes. I don't have specific names or examples for you, but I have heard women who belong to NOW and business and career associates who have wanted to pursue this avenue as a means of furthering their career and business tactics. As Ms. Thalacker had stated earlier, there are probably several categories of women who would want to do that; suddenly try it once and then give up. Some may be fearful of pursuing it because of recriminations and many other people who are simply waiting for the laws to change and will take advantage of it. I work in the public school system and as recently as last week, one of the senior administrators of the Office of Education told me gleefully that she has joined her local Rotary Club and was quite proud of that.

Question: Correct me if I'm wrong; you stated that you have 550 members comprised of both men and women. How many of the membership of 550 are men?

Ms. Virago: Approximately 15%.

Question: There are women's clubs as well that have restricted membership, I believe. Soroptomists fits that role. What has been the attitude of private women's clubs? Are they in favor of opening up their membership as we have, as we move down the road to equal access?

Ms. Virago: In all honesty, I can't speak for the women in those private clubs.

Question: Do you think that the inclusion in the proposed ordinance of attorney fees would be helpful?

Ms. Virago: I'm not sure I understand the question.

Question: Do you think it's wise to include attorney's fees for the prevailing party?

Ms. Virago: I'm not sure. Can you give me more information on that?

Question: The proposed ordinance says the attorney's fees will be awarded to the prevailing party.

Ms. Virago: I would think so. I wasn't exactly sure of your question, but I think that that would be an incentive knowing what lawyer's fees are.

DARRELL STEINBERG  
Chair  
Jewish Community Relations Council

I come here today as Chair of the Jewish Community Relations Council, to support the ordinance prohibiting discrimination against people who seek entry or admission to private clubs when that discrimination is based on sex, race, religion, ancestry, or national origin. I express my support on behalf of the Jewish community because our history, the history of the Jewish people in this country, has made us sensitive to the hurt and to the harm that can come from discrimination in any form. The types of clubs which this ordinance attempts to reach are clubs in which the opportunity to join and participate provide an opportunity to those participants to advance both professionally and socially. Those types of opportunities can not be conditioned upon race, religion, sex, or national origin.

Today, anti-semitism is present though its manifestations are less overt than in the past. But it wasn't too many years ago that the types of discrimination that this ordinance seeks to prohibit was practiced overtly against Jewish people. Earlier in this century, for example, the Presidents of many of this country's prestigious universities, with the support of a great majority of the American public, attempted to severely limit the number of Jews to be offered the opportunity to pursue higher education. Harvard, Yale, Columbia...(end of tape)...to the ugliness of what occurs when any institution formulated for the advancement of people practices discrimination. I quote, "Less there be any doubt as to what end was desired, Columbia, along with Yale and most other private colleges and universities, began asking questions not only about religion and national origin, but also about the maiden names of the applicants' mothers." This is in reference to Jewish people applying for admission. As a further cautionary measure, an applicant was also required to submit a photograph so that one's physiognomy could be scrutinized for Jewish characteristics. In some sense, times have changed. We don't know of clubs in the Sacramento area that discriminate overtly against Jews, but that doesn't lessen the Jewish community's resolve to work and support legislation such as the present ordinance which will protect women, which will protect Blacks, which will protect Asians, which will protect Hispanics, which will protect other groups which today are the prime targets of discrimination. As Dr. Martin Luther King stated so eloquently in his letter from the Birmingham jail, "I am cognizant of the inter-relatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever effects one directly affects all indirectly." The Jewish community will not stand idly by. Our community supports strongly and will continue to support efforts such as this ordinance, which serve to help eliminate all remaining vestiges of discrimination.



## WOMEN LAWYERS OF SACRAMENTO

P.O. Box 161523, Sacramento, California 95816 • (916) 485-7029

October 22, 1987

Human Rights/Fair Housing  
Commission of the  
City and County of Sacramento  
2131 Capitol Avenue, Suite 206  
Sacramento, California 95816

Dear Commissioners:

On behalf of Women Lawyers of Sacramento, I am submitting this written testimony for the Commission's hearing about "Clubs that Discriminate in Membership and Where Business is Frequently Conducted."

Clubs and organizations which engage in discriminatory practices have been getting an increasing amount of attention. In 1987 alone, the Franchise Tax Board has ruled that money spent at such clubs does not qualify as a legitimate business expense for tax deductions; the Attorney General opined that discriminatory practices could be a valid basis for denial of a liquor license; and the State Bar Board of Governors adopted a resolution, originally sponsored by Women Lawyers of Sacramento, that no local bar association may participate in the State Bar Conference of delegates if the bar association holds any of its activities in clubs engaging in discriminatory practices.

Many people wonder, however, what all the "fuss" is about. These people state: "Nothing significant occur(s) at this \_\_\_\_\_ (fill in the blank with one of the following: eating establishment, country club, civic organization); it's just a few good ol' boys getting together for \_\_\_\_\_ (lunch, golf, community service." Yet, if it is just a few friends getting together socially, why are so many memberships in these organizations and meals at these clubs paid for by business accounts and deducted as business expenses? The reason is obvious: All this fraternizing is fun, yet it is for a serious purpose--to make business contacts.

1987 WLS BOARD: Ruthann G. Ziegler, President • Diane Wasznicky, Vice President • Windie O. Scott, Secretary • Dawn H. Cole, Chief Financial Officer  
Corinne L. Murphy, Bar Delegations • Whitney Rimel, Judicial Evaluations • Jennifer Brodkey Kaufman, Legislation • Melissa M. Meith, Membership  
Andrea Rosen, Newsletter • Jerilyn Paik, Past President • Susan B. Carlsen, Programs • Tami Buscho, Publicity/Community Relations • Elaine P. DiPietro, Scholarship  
PAST PRESIDENTS: Frances N. Carr • Virginia Mueller • Rita Singer • Barbara Calais • Carolyn Kemmler • Kapsy Root  
Barbara McCallum • Lillian Jenks • Mary-Lou Smith • Evangeline Miller • Susan Orton • Karen Stevens  
Marguerite Roth • Carol Wallacker • Judith Harper • M.J. Hamilton • Deborah M. DeBow • Janice L. Thurston • Jerilyn Paik



Human Rights/Fair Housing  
Commission  
October 22, 1987  
Page 2

999999.60-LT-102287-403

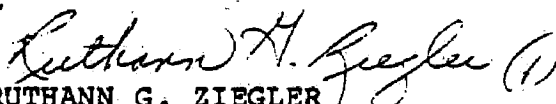
For any attorney in private practice, or indeed any businessperson, business contacts are essential to bring in a continuing stream of new clients. A successful businessperson must also maintain existing clients; this is not achieved by sitting in one's office. It is achieved by social and business contacts who often can be met, seen and cultivated at those special private restaurants and private golf courses. When women--or blacks--or Hispanics--or Jews--are denied equal access to such facilities, it hinders our ability to make these contacts necessary to advance in our careers. It is also fundamentally unjust and inconsistent with the goals of a free society.

There is a second argument advanced in support of discriminatory clubs: Why don't women (or blacks, or Hispanics, or Jews) just form their own special interest clubs? First, there is an initial problem as to whether there are enough women (blacks, Hispanics, or Jews) in business which would make, in the case of women a "Sutter-ette Club" financially successful. Second, it must be recognized, at least in the 1980s, that the majority of the existing decisionmakers in business, banking, insurance and law are males. These are still the people who are meeting other males at their clubs to which women or other minorities have limited or no access.

Until the 1960s, in many parts of the United States, there were also two classes of restaurants and recreational facilities. These classes were designated "white" and "colored." Some restaurants when to elaborate pains to "become" private clubs so they could legally exclude blacks. Eventually, most people and the courts decided that "Separate But Equal" for whites and blacks was simply another form of racial discrimination. Why is "Separate But Equal" for women and men, Protestants and non-Protestants, whites and non-whites, any different?

On behalf of Women Lawyers of Sacramento, I strongly urge support of a prohibition of discrimination by clubs which are distinctly non-private.

Sincerely,

  
RUTHANN G. ZIEGLER  
President

RGZ/baf

SUSAN Carlsen  
Board Member  
Women Lawyers of Sacramento

Question: Are you aware of any discrimination against members of your organization who have attempted to join clubs or attend clubs in the Sacramento area and thereby felt disenabled from conducting their business?

Ms. Carlsen: Certainly; in a general way, the answer to your question is yes. I cannot, however, cite you statistics or specific names or incidents of people who have been discriminated against. In discussing women's access to what I consider public, if not quasi-public, facilities. I have been heard before to tell the story of one of the members of Women Lawyers of Sacramento. She was one of the few women who worked for a large and prestigious law firm. She achieved the position with considerable discrimination along the way, but she achieved the position of partner and was put in charge of doing a very important job for her firm. At that time, her law firm had a firm membership in a club which discriminates on the basis of gender or sex. When she went to that club as she was ordered to do by her senior partners, took clients to lunch, entertained them, made the kind of business contacts that were then referred to in the prepared statement, she was required to take a male with her to sign the check. She could take a messenger, she could take a law clerk, she could take an associate. She rarely had to drag along another partner, but even though she was a partner and she had achieved this high position in her firm, she was unable to sign the tab for lunch. That certainly is one experience that one of the members has had.

Question: Are there a significant number of members in your organization who would benefit from the ordinance in their professional/social positions?

Ms. Carlsen: It is certainly my belief that that would be true. Again, the prepared statement is from the Board of Directors. What you're getting now are my personal views. Once the doors are open, once women and other minorities are admitted to social clubs who heretofore have excluded them, it is my belief that they will have the opportunity to show what they have shown clients that have already come in the door. My experience in my firm is that sometimes, a client will be resistant; "you mean you're going to give me a girl lawyer"? When, however, they have experienced working with a woman who is an attorney, before very long they are saying, "she's really competent, she wrote a great brief, she won my case." She has had an opportunity to present herself and to convince herself on her merits as a lawyer to the client that she can do what needs to be done. Without that initial contact, however, she never has the opportunity to get over the client's initial reservations about an attorney who doesn't look like his/her mind sight of what an attorney is; the good looking man in the gray suit with the frosty sideburns. So, in that way, yes, I do believe that women who are attorneys and women who are on the bench will have the opportunity once discriminatory clubs have opened their doors to have those advantages.

Question: I wasn't aware that a law firm can be a member of the Sutter Club?

Ms. Carlsen: I didn't refer to any particular organization.

Question: But that's the gist of what you're saying, in effect is, that this firm had a firm membership in the past.

Ms. Carlsen: Had one in the past. I don't believe that's still the policy in that particular organization.

Question: Do you know off-hand, if there are judges that belong to The Sutter Club? Do you know the extent of membership and dealings in the legal profession in Sacramento locally?

Ms. Carlsen: I really can't give you specific numbers. Again, it is commonly believed in the profession that there are particular organizations which are a good place to take clients, to run into the judge, who you know may just decide you're a reasonable person.

Question: And this club, which shall remain nameless, is one of those places in Sacramento where one goes to make those kind of contacts?

Ms. Carlsen: I think there are many places where one could go to make those contacts. Some of those places do discriminate on the basis of gender.

## PUBLIC COMMENT

BOB DINSMORE

My name is Bob Dinsmore. I live at 2160 Royal Road, Sacramento, and I'm not speaking for any organization, just for myself. I had a chance in June to look over Councilmember David Shore's proposed ordinance concerning non-discrimination in clubs in Sacramento and I was frankly, disturbed by it from the viewpoint of civil liberties. Some years ago, I heard someone make the statement, "I would fight to my death for you to have the right to speak out against my race and religion." That indicated the extent to which, in civil liberties, we feel that the morals of the community should hold sway and the government is to hold back and not dictate the morals of the ruling group in government over those of the people. This allows us in speech and in the press to do some strange things that many of us feel are morally wrong. Still, we feel the right to have the harsh civil liberties are very important because we fear government repressive power of cutting out the community. Freedom of Association is one of those civil liberties not explicitly mentioned in the First Amendment of the Federal Constitution. There is reference to other things that have some relationship, but right of privacy and freedom of association are two of the concepts that have been growing in strength, although they are not explicitly stated originally. Freedom of association, is at its very core, two concepts are the right to choose membership of the organization. The second, the right of the group to act as a body and not just as individuals. Commercialism is not a tinge against civil liberties. Twenty years ago, I met people in Sacramento that thought that business had no First Amendment rights concerning commercial advertising. The courts, about 15 years ago, said yes, they do. In book publishing, freedom of the press, commercialism is not a tinge. We still expect it to hold even though commercialism is involved. Freedom of association, if we support its growing interest in our country, it must apply to private clubs in terms of membership and I think Councilmember Shore's proposed law is a blow against freedom of association and should be struck down for that reason from the viewpoint of civil liberties. I would also mention, if there is to be a suit against a club for discrimination, it should be against the membership committee, against the people on the committee, against the people that voted to discriminate, against the club in general. If there is a penalty, it should be limited to a certain percentage of the membership dues paid to the club. We're much against \$60,000, \$100,000 million dollar settlements because someone feels they missed a business opportunity by not joining the organization. If you haven't enumerated all the clubs affected by the law limits, only a member of organizations and who knows what they are, I think you take, have a second thought about passing such laws. I'm not sure what particular law you're considering here, but I thought someone should speak out for civil liberties and morally, we don't want discrimination, but civil liberties in this country are very harsh in application. Yet we allow the people through their own morals to make decisions and not have them forced upon them. Thank you.



# Sacramento County Bar Association

101 Court Plaza Building • 901 H Street • Sacramento, California 95814 • Phone (916) 448-1087

October 14, 1987

## OFFICERS

**WILLIAM A. KERSHAW**  
*President*

**JUDITH A. HARPER**  
*First Vice President*

**SAMUEL L. JACKSON**  
*Second Vice President*

**RICHARD H. HOFFELT**  
*Secretary/Treasurer*

**ROBERT M. STONE**  
*Executive Director*

## COUNCIL MEMBERS

**BARBARA H. YONEMURA**

**CURTIS R. NAMBA**

**ROBERT S. WILLETT**

**D. THOMAS WOODRUFF**

**RICHARD SOKOL**

**JANICE THURSTON**

**DIANE E. WASZNICKY**

**ALCOLM WEINTRAUB**

**N. PETERSON**

**RILYN PAIK**

**JAY-ALLEN EISEN**

**NANCY HOTCHKISS**

*Barrister's Club of Sacramento*

**STEPHANIE SMITH**

*Barrister's Club of Sacramento*

**GERALD SINGER**

*Lawyer Referral and  
Information Service*

**FERN M. LAETHEM**

*Indigent Criminal Defense Panel*

**JERRY CHONG**

*Asian Bar Association of  
Sacramento*

**ESTELLE SCHLEICHER**

*Capital City Trial Lawyers  
Association*

**RENARD SHEPARD**

*Wiley Manuel Bar Association  
of Sacramento*

**RUTHANN ZIEGLER**

*Women Lawyers of  
Sacramento*

**LUIS CESPEDES**

*LaRaza Bar Association*

**ROBERT MILLER**

*Federal Bar Association*

**MARK A. PRUNER**

*Christian Legal Society*

Mr. Randy Shiroy  
Human Rights/Fair  
Housing Commission  
2131 Capitol Avenue #206  
Sacramento, CA 95816

Re: Private Clubs Ordinance

Dear Mr. Shiroy:

I am in receipt of Mr. Kennison's September 21, 1987 correspondence relative to the proposal for an ordinance prohibiting discrimination by not distinctly private clubs. The Sacramento County Bar Association, through its Bar Council, passed a resolution on this issue in December of 1986. Our Bar Association's position relative to the issue of private discrimination is clearly set forth in said resolution which I have enclosed for your review.

If you have any questions, please feel free to give me a call.

Very truly yours,

*William A. Kershaw*  
William A. Kershaw

WAK:ll

cc: Robert Stone  
LT8-101487

## PRIVATE CLUBS

WHEREAS, state and federal public policy prohibits discrimination on the basis of sex, race, or ethnicity by private clubs deemed to be business establishments; and

WHEREAS, it is commonly recognized and acknowledged that such discrimination presents a serious professional problem to women and minority lawyers and is a real obstacle to their professional advancement and to their full and effective representation of clients; and

WHEREAS, women and minorities constitute a significant portion of the members of The Sacramento County Bar, and

WHEREAS, the Board of Governors of The State Bar of California has previously recognized this problem and adopted resolutions in furtherance of state and public policy which prohibit discrimination in employment by the State Bar and use by the State Bar of private facilities which discriminate against women and minorities; and

WHEREAS, the Board of Governors of The State Bar of California has expressed its support and endorsement of recent actions taken by the California Judges Association and by the Judicial Council addressing the issue of gender bias in the court system and expressed its willingness to work with the Association and with the Council on this issue; and

WHEREAS, the American Bar Association and other bar associations in the United States, recognizing that the use of discriminatory facilities is a problem of particular significance to the legal profession, have adopted policies against the use of such facilities by their organizations,

lawyers and judges; and therefore it is

RESOLVED, that the Sacramento County Bar Council hereby authorizes the publication of the following letter in the Sacramento County Bar Docket, Sacramento Daily Recorder, the Sacramento Bee and Union, as well as other appropriate publications:

To the Membership of the Sacramento County Bar:

Some private business clubs in California do not allow women, or minorities, to become club members or to use the clubs' facilities. That presents a serious professional problem to women and minority lawyers who wish to belong to the clubs, or use them, for business or professional purposes. The clubs provide convenient places to meet and conduct professional business with clients and other lawyers. In some areas it appears to be important to have the opportunity to belong to private business clubs in order to be a full member of the profession, to advance in the profession, and to fully and adequately represent clients.

We believe that the profession should work hard to eliminate that obstacle. It is obviously unfair, it is an anachronism, and it affects a large percentage of the profession; about 40% of the new admittees to the Bar in the last seven years have been women, and when that figure is combined with minority admittees for the same period, the total approximates 50% of the lawyers admitted to the Bar since 1979.

The Sacramento County Bar Council urges Sacramento area law firms not to hold firm functions at business clubs that discriminate, and we urge lawyers who belong to those clubs to work to reform their policies. Should a club be unwilling to reform its policies, (1) we urge law firms not to pay membership fees in the club for lawyers who belong to it, or to reimburse expenses for use of the club, (2) we encourage lawyers not to use the club for professional or business purposes, or to consider resigning.

We respect the right of free association, and of course lawyers are, as others, free to associate with whom they will. We simply ask that lawyers choose, freely, to work to stop private business clubs from continuing their discriminatory policies. This is a professional problem, and the profession should, we believe, stand together on it.

9/24/86

CRIMINAL BRANCH OFFICES

429 E. BAUCHET STREET  
LOS ANGELES 90012  
(213) 485-6661

1945 S. HILL STREET  
LOS ANGELES 90007  
(213) 485-2828

838 S. BEACON STREET  
SAN PEDRO 90711  
(213) 548-7633

14410 SYLVAN STREET  
VAN NUYS 91401  
(818) 989-8881

1645 CORINTH AVENUE  
LOS ANGELES 90025  
(213) 478-0731

900 THIRD STREET  
SAN FERNANDO 91340  
(818) 989-8752

Office of the City Attorney

Los Angeles, California



JAMES K. HAHN  
CITY ATTORNEY

October 21, 1987

EXECUTIVE OFFICE  
1800 CITY HALL EAST  
LOS ANGELES 90012  
(213) 485-5408

CRIMINAL BRANCH  
(213) 485-5470

CIVIL BRANCH  
(213) 485-6370

AIRPORT DIVISION  
ONE WORLD WAY  
LOS ANGELES 90009  
(213) 646-3260

HARBOR DIVISION  
425 S. PALOS VERDES  
SAN PEDRO 90733  
(213) 519-3750

WATER AND POWER DIVISION  
111 N. HOPE STREET  
LOS ANGELES 90012  
(213) 481-6373

Randy Shiroy  
Human Rights/Fair Housing Commission  
2131 Capitol Avenue  
Suite 206  
Sacramento, California 95816

Dear Mr. Shiroy:

Enclosed please find a written statement detailing the experience of the Los Angeles City Attorney's Office with regard to enforcement of our ordinance prohibiting discrimination by clubs and organizations which are not distinctly private as well as comments advocating the adoption of a similar ordinance by Sacramento.

If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,

JAMES K. HAHN

By

Pamela A. Albers  
Deputy City Attorney

PAA:bc  
Enclosure

COMMENTS

SUBMITTED TO THE HUMAN RIGHTS/FAIR HOUSING COMMISSION REGARDING  
THE PROPOSED "ORDINANCE PROHIBITING DISCRIMINATION BY NOT DIS-  
TINCTLY PRIVATE CLUBS" BY THE LOS ANGELES CITY ATTORNEY'S OFFICE

October 21, 1987

IN JUNE OF THIS YEAR THE LOS ANGELES CITY COUNCIL ADOPTED AN ORDINANCE VERY SIMILAR TO THE ONE UNDER REVIEW BY THE COMMISSION. I AM THE DEPUTY CITY ATTORNEY RESPONSIBLE FOR ENFORCEMENT OF THIS ORDINANCE. I BELIEVE THAT MY EXPERIENCE MAY SHED SOME LIGHT ON THE REASONS WHY THIS ORDINANCE IS IMPORTANT FOR SACRAMENTO AND ITS CITIZENS.

THE BASIC RIGHT OF ALL RESIDENTS OF SACRAMENTO TO HAVE A FAIR AND EQUAL OPPORTUNITY TO PARTICIPATE IN THE BUSINESS AND PROFESSIONAL LIFE OF THE CITY IS THE UNDERLYING RATIONALE OF THE ORDINANCE. THIS RIGHT HAS REPEATEDLY BEEN RECOGNIZED AND UPHELD BY THE COURTS, MOST RECENTLY BY THE UNITED STATES SUPREME COURT IN THE ROTARY CLUB CASE. THE ROTARY DECISION ELIMINATES ANY POSSIBLE CLAIM THAT THE PROPOSED ORDINANCE WOULD UNCONSTITUTIONALLY INFRINGE UPON THE FREEDOM OF ASSOCIATION OF THE SO-CALLED PRIVATE CLUBS AND THEIR MEMBERS.

TO DENY THAT THESE ORGANIZATIONS WHICH SEEK TO PROHIBIT THE ENTRY OF WOMEN AND MINORITIES ARE BUSINESS ORGANIZATIONS IS DISHONEST. IN THE LAST SIX MONTHS I HAVE SPOKEN WITH HUNDREDS OF MEMBERS AND POTENTIAL MEMBERS OF SUCH PRESTIGIOUS CLUBS AS THE JONATHAN CLUB, THE CALIFORNIA CLUB AND THE BRENTWOOD COUNTRY CLUB. OVER AND OVER AGAIN, ONE HEARS OF THE CONTACTS, THE NETWORKING, THE BUSINESS BENEFITS ATTACHED TO MEMBERSHIP. CLEARLY, THIS BENEFIT IS THE REASON THAT MANY FIRMS PAY FOR THEIR EMPLOYEES' MEMBERSHIP DUES. WITHOUT THE PROTECTION OF LAW, MANY WOMEN AND MINORITIES WILL CONTINUE TO BE DENIED A VERY REAL AVENUE FOR ADVANCEMENT IN THE BUSINESS COMMUNITY.

AN ADDITIONAL ASPECT OF THE ORDINANCE WHICH HAS PROVED IMPORTANT HERE IN LOS ANGELES IS THE PROHIBITION OF DISCRIMINATION IN THE USE OF FACILITIES. SEGREGATED FACILITIES CREATE THE SAME BUSINESS BARRIERS THAT DISCRIMINATORY MEMBERSHIP PRACTICES DO, AND IN FACT MAY BE MORE HARMFUL IN THAT THE WOMAN OR MINORITY PERSON IS NOW PAYING FULL DUES FOR LESS THAN FULL ENJOYMENT OF THE MEMBERSHIP.

I NOTE THAT THE ORDINANCE PROPOSED BY CITY COUNCILMEMBER DAVE SHORE DIFFERS FROM THE LOS ANGELES ORDINANCE WITH RESPECT TO THE NUMBER OF MEMBERS REQUIRED TO BRING AN ORGANIZATION WITHIN THE PROVISIONS OF THE LAW. IN LOS ANGELES, AND ALSO IN NEW YORK, THE ORDINANCE SETS THE NUMBER AT 400. SIZE OF MEMBERSHIP IS OF COURSE SOMETHING THAT THE SUPREME COURT LOOKED TO TO DETERMINE WHETHER A CLUB COULD CLAIM AN "INTIMACY OF RELATIONSHIP" WHICH WOULD ALLOW IT FULL FIRST AMENDMENT PROTECTION. NOTING THAT THE SIZE OF LOCAL ROTARY CLUBS RANGED FROM FEWER THAN 20 TO MORE THAN 900, WITH AN AVERAGE LOCAL MEMBERSHIP SIZE OF 46 MEMBERS, THE COURT FOUND THAT THIS DATA DID NOT SUGGEST "THE KIND OF PRIVATE OR PERSONAL RELATIONSHIPS TO WHICH WE HAVE ACCORDED PROTECTION UNDER THE FIRST AMENDMENT." THUS, IT IS CLEAR THAT THE 400 NUMBER MEETS THE COURT'S REVIEW. WHETHER THE NUMBER PROPOSED IN SACRAMENTO IS SUFFICIENT IS DIFFICULT TO SAY. HOWEVER, I BELIEVE THAT AN ORDINANCE CONTAINING ALL THREE REQUIREMENTS (I.E. LARGE SIZE, REGULAR FOOD SERVICE, AND PARTICIPATION BY NONMEMBERS, FINANCIAL OR OTHERWISE) SHOULD WITHSTAND CONSTITUTIONAL CHALLENGE.

FINALLY, I WOULD LIKE TO ADDRESS AN ISSUE WHICH HAS BEEN RAISED REGARDING THE INVOLVEMENT OF THE CITY IN THESE MATTERS. AS A CITY ATTORNEY, I BELIEVE THAT IT IS OUR RESPONSIBILITY TO PROTECT THE

RIGHTS OF ALL CITIZENS. UNTIL WOMEN AND MINORITY MEMBERS ARE  
AFFORDED A TRUE OPPORTUNITY TO PARTICIPATE IN THE BUSINESS COM-  
MUNITY, IT IS THE DUTY OF GOVERNMENT TO INTERVENE TO ASSURE THEM  
THEIR RIGHTS.

JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. BOX 944255  
SACRAMENTO 94244-2550  
(916) 445-9555

October 21, 1987

(916) 324-7860

Martin L. Kennison, Chairperson  
Human Rights/Fair Housing Commission  
2131 Capitol Ave., Suite 206  
Sacramento, CA 95816

Re: Discriminatory Clubs Ordinance

Dear Mr. Kennison:

In response to your request, this office has reviewed the proposed ordinance which would ban discrimination by clubs which are not districtly private and which regularly are used in furtherance of trade or business.

It appears that the proposed ordinance is both consistent with this state's policy to guarantee equal access to all business activities and constitutionally sound.

California has taken a number of steps to eliminate discrimination in business opportunities. In Board of Directors of Rotary International v. Rotary Club of Duarte (1987) 107 S.Ct. 1940, the Supreme Court upheld the application of California Civil Code section 51, the Unruh Civil Rights Act, to ban discrimination by a membership group found to be a "business establishment." Bohemian Club v. Fair Employment and Housing Commission (1987) 187 Cal.App.3d 1; appeal dismissed (1987) \_\_\_\_\_ S.Ct. \_\_\_\_\_, upheld the application of the California Fair Employment and Housing Act to ban employment discrimination by a private club. And the enactment of AB 239 and the promulgation of regulations by the Franchise Tax Board will ban the state tax deductibility of business expenses incurred at discriminatory clubs. Each of these actions, like your proposed ordinance, contributes to "the strength of the social policy against discrimination." (70 Ops.Cal.Atty.Gen. 75 (1987).) (ABC may revoke liquor licenses of private clubs which discriminate on the grounds of public welfare.)

Of course, the United States Supreme Court has just agreed to hear a challenge to a New York City ordinance very similar to your proposed ordinance. (New York State Club Assn., Inc. v. City of New York (1987) 69 N.Y.2d 211, probable jurisdiction noted (Oct. 5, 1987) No. 86-1836, \_\_\_\_\_ S.Ct. \_\_\_\_\_.) However, we are confident that the New York City ordinance will be upheld as another legitimate method of addressing discriminatory practices which limit business opportunities.

Discrimination in business practices has never been held to be constitutionally protected. As the United States Supreme Court held in its unanimous decision rejecting the contention that a law firm's partnership considerations were constitutionally immune from Title VII, the federal law prohibiting employment discrimination:

"[I]nvidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections.' Norwood v. Harrison, 413 U.S. 455, 470 (1973)." Hishon v. King & Spalding, 467 U.S. 69, 78 (1984).

See also Runyon v. McCrary, 427 U.S. 160, 176 (1976); Norwood v. Harrison, 413 U.S. 455, 469-470 (1973); and Railway Mail Assn. v. Corsi, 326 U.S. 88, 93-94 (1945).

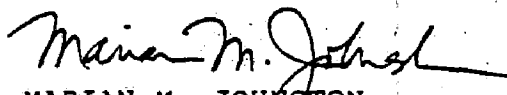
Freedom of intimate association is, of course, constitutionally guaranteed by the First Amendment, but the two recent decisions of the Supreme Court describing that guarantee explain that constitutional protection only extends to "those relationships, including family relationships, that presuppose 'deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.'" (Rotary, 107 S.Ct. at 1946, quoting Roberts v. United States Jaycees, 468 U.S. 609, 619-620 (1984).)

Clubs in which business activities occur are inherently not distinctively personal, and furthermore, even if regulation of discriminatory practices may result in some minor infringement of protected rights of privacy and association, any such infringement is fully justified by the compelling interest in eliminating invidious discrimination. See, Jaycees, 468 U.S., at 1623; Rotary, 107 S.Ct., at 1947; and Bohemian Club, 187 Cal.App.3d, at 14.

California's sharply defined commitment to equal business opportunities for all Californians will certainly be furthered by your proposed ordinance.

Sincerely,

JOHN K. VAN DE KAMP  
Attorney General

  
MARIAN M. JOHNSTON  
Deputy Attorney General  
MMJ:pm



**HUMAN RIGHTS/FAIR HOUSING COMMISSION  
OF THE CITY AND COUNTY OF SACRAMENTO**

2131 Capitol Avenue  
Suite 206  
Sacramento, CA 95816  
(916) 444-6903

November 6, 1987

Mr. Hilton L. Williams, President  
Board of Directors  
The Sutter Club  
1220 9th Street  
Sacramento, CA 95814

Dear Mr. Williams:

On behalf of the Human Rights/Fair Housing Commission, I would like to thank you for taking the time to prepare your position statement dated October 20, 1987, on the issue of "Private Clubs That Discriminate in Their Membership and Where Business is Frequently Conducted".

In addition, the Commission is very appreciative of the time Mr. Marvin Shoultes, Manager, of The Sutter Club took to deliver your statement and answer our questions. Mr. Shoultes was very helpful in providing the Commission with information regarding the operations of The Sutter Club.

However, Mr. Shoultes as a staff member felt it would be inappropriate for him to answer a number of questions the Commissioners had pertaining to Club policy matters. Mr. Shoultes' feelings on this point are certainly understandable.

Therefore, I would like to take this opportunity to invite you to the next Commission meeting so that you might clarify some questions the Commissioners have regarding Club policies. As one of the clubs likely to be affected by the proposed ordinance we feel it is very important that we clearly understand both the operations and policies of The Sutter Club.

COMMISSIONERS

Martin L. Kennison  
Chair

Martha Powers  
Vice-Chair

Jean Rodgers  
Secretary

Rosemary Metrailler  
Treasurer

Robbin DeShields Randolph  
Executive Director

Leonard Cramer  
Fred Dawkins

Robert Dresser  
Marina Estrada  
Ron Gray

Dean Lan  
Shauna Long  
John O'Neill

Bruce Potter  
Andrea Rosen



Affirmative Action/Equal Opportunity Employer

Letter to: Hilton L. Williams  
November 6, 1987  
Page 2

The next Commission meeting will be held on Wednesday, November 18, 1987 at 6:30 p.m. in Hearing Room #1, 1st Floor, County Building, 700 "H" Street. Please contact either Robbin DeShields Randolph, Executive Director, or Randy Shiroti, Human Rights Associate at 444-6903, if you should have any questions.

I look forward to hearing from you.

Sincerely,



Martin L. Kennison  
Chair

MLK:dmw

THE SUTTER CLUB

November 16, 1987

Mr. Martin L. Kennison  
Human Rights/Fair Housing Commission  
2131 Capitol Avenue, Suite 206  
Sacramento, CA 95816

Dear Mr. Kennison:

Due to a conflict of schedule and the lateness of the notice received, I regret that I will be unable to attend the meeting on November 18th.

Sincerely,

*H. L. Williams*  
Hilton L. Williams  
President

HLW:jj



**HUMAN RIGHTS/FAIR HOUSING COMMISSION  
OF THE CITY AND COUNTY OF SACRAMENTO**

2131 Capitol Avenue  
Suite 206  
Sacramento, CA 95816  
(916) 444-6903

November 24, 1987

Hilton L. Williams, President  
The Sutter Club  
1220 Ninth Street  
Sacramento, CA 95814

Dear Mr. Williams:

I was disappointed to hear that you could not attend the Human Rights/Fair Housing Commission's meeting on November 18, 1987. During that meeting, the Commission reiterated its desire to meet with you and learn more about the Sutter Club's policies and operations.

As I mentioned in my letter dated November 6, 1987, the Commission has a number of questions pertaining to Club policy matters which, at this point, remain unanswered. In addition, I would ask that you reconsider your response to the Commission's request for a copy of the Club's house rules, which was conveyed to you by Randy Shirai, Human Rights Associate, on November 3, 1987.

As one of the Clubs to be affected by a proposed ordinance prohibiting discrimination in membership by private clubs where business is frequently conducted, the Commission feels it is important that we understand the operations, policies and concerns of the Sutter Club. Therefore, I would like to extend to you another invitation to meet with Commissioners and discuss this matter at your earliest possible convenience.

**COMMISSIONERS**

Martin L. Kennison  
Chair

Martha Powers  
Vice-Chair

Jean Rodgers  
Secretary

Rosemary Metraiter  
Treasurer

Robbin DeShields Randolph  
Executive Director

Leonard Cramer  
Fred Dawkins

Robert Dresser  
Marina Estrada  
Ron Gray

Dean Lan  
Shauna Long  
John O'Neill

Bruce Pomer  
Andrea Rosen



Affirmative Action/Equal Opportunity Employer

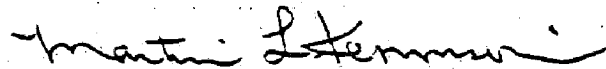
Letter to: Hilton L. Williams  
November 24, 1987  
Page 2

As you are well aware, the testimony and information presented to the Commission on this issue will be used in formulating a report with recommendations for the City Council's consideration. If you do not wish to discuss this matter further, it will be noted in our report to the City Council that the Sutter Club declined additional opportunities to present their concerns and clarify questions regarding Club policies and operations.

As the Commission would like to have its report submitted to the City Council by the end of January, 1988, I must ask that any meeting be held prior to December 30, 1987.

Please contact Randy Shirol, Human Rights Associate, or Robbin DeShields Randolph, Executive Director, at 444-6903, to arrange a meeting or if you have any questions.

Sincerely,



Martin L. Kennison  
Chair

MLK:dmw

CHRONOLOGY OF CONTACT WITH CURRENT (1988)

SUTTER CLUB PRESIDENT, DAVID T. CLARK

- February 1, 1988: Receipt of letter from David T. Clark, regarding status of Commission's review of the proposed ordinance.
- February 9, 1988: The Executive Committee of the Commission was presented with the letter from David T. Clark, President, The Sutter Club (received February 1, 1988). The Committee requested staff to invite Mr. Clark to appear before them at the February 16, 1988, Executive Committee meeting to provide clarification of The Sutter Club's policies and practices.
- February 10, 1988: Robbin DeShields Randolph, Executive Director, contacted Mr. Clark by telephone and invited him to attend the February 16, 1988 meeting of the Executive Committee. Mr. Clark indicated that he was going out of town and would contact the Executive Director regarding his availability for a meeting, on Tuesday, February 16, 1988.
- February 16, 1988: Mr. Clark informed the Executive Director by telephone that he would not be able to attend the Executive Committee meeting at 5:30 p.m., but would like to meet with staff and be given copies of all correspondence with The Sutter Club and transcripts of the testimony provided at the hearing by Marvin Shoultes, Manager, The Sutter Club.

Robbin Randolph, Executive Director, and Randy Shiroy, Senior Associate, met with Mr. Clark during the afternoon and provided the requested materials. Mr. Clark was told that another meeting would be scheduled for him to meet with the Executive Committee on Monday, February 22, 1988, and he agreed to call the Commission on Friday, February 19, to indicate whether he would attend.

Chronology of Contact with Current (1988)  
Sutter Club President, David T. Clark

At the Executive Committee meeting held at 5:30 p.m., the Committee was briefed on Mr. Clark's meeting with staff earlier that afternoon. The Committee agreed to meet with Mr. Clark on Monday, February 22, 1988.

February 19, 1988: Mr. Clark called the Executive Director and indicated that he would not be able to attend a meeting on Monday, February 22, 1988. He was informed that the Commission's report would be voted on at the February 24, 1988 Commission meeting and that he was welcomed to speak during public comment, or to submit a written response to the Commission's questions.

Mr. Clark requested a draft copy of the Commission's report. The report was provided to his secretary, along with a letter (dated February 19, 1988) from the Commission's Executive Director, confirming the conversation of that afternoon.

FEB 01 1988

THE SUTTER CLUB

January 28, 1988


Martin L. Kennison  
Human Rights/Fair Housing Commission  
2131 Capitol Avenue, Suite 206  
Sacramento, CA 95816

Dear Mr. Kennison:

Recently I was elected to serve as President of the Sutter Club for 1988. In reviewing past correspondence, it has come to my attention that the Human Rights/Fair Housing Commission has been asked to consider a proposed ordinance which involves private clubs such as ours.

Obviously, this matter is of importance to our organization. I am interested in the status of your review, and would like to discuss this issue with you. I would appreciate your contacting me at your earliest convenience. Thank you.

Sincerely,

  
David T. Clark  
President

DTC:jj



**HUMAN RIGHTS/FAIR HOUSING COMMISSION  
OF THE CITY AND COUNTY OF SACRAMENTO**

2131 Capitol Avenue  
Suite 206  
Sacramento, CA 95816  
(916) 444-6903

February 19, 1988

David T. Clark, President  
The Sutter Club  
1220 Ninth Street  
Sacramento, CA 95814

Dear Mr. Clark:

This letter will confirm our conversation of Friday afternoon, February 19, 1988.

Members of the Commission's Executive Committee are available to meet with you on Monday, February 22, 1988, at 4:00 p.m. Since you have indicated that you are not available to attend, the Executive Committee requests that you submit a written statement, which addresses the questions raised in the correspondence and transcripts we provided you on February 16, 1988. In addition, we would like copies of The Sutter Club's By-laws and House Rules.

We request that any written information be delivered to the Commission's office no later than 4:00 p.m., Wednesday, February 24, 1988. At the meeting on Wednesday, February 24, 1988, the Commission will review, modify and approve the Report to the City Council on a Proposed Ordinance Prohibiting Discrimination by Clubs that are not Distinctly Private."

As a member of the public, you are welcome to speak before the Commission during public comment. The meeting will be held:

Wednesday, February 24, 1988 - 6:30 p.m.  
Sacramento City Planning Department  
1231 "T" Street, Sacramento

We sincerely hope that you will take advantage of this opportunity to provide additional information on The Sutter Club's perspective on this important issue.

Sincerely,

Robbin DeShields Randolph  
Executive Director

RDR:dmw

COMMISSIONERS

Martin L. Kennison  
Chair

Martha Powers  
Vice-Chair

Jean Rodgers  
Secretary

Rosemary Metrailler  
Treasurer

Robbin DeShields Randolph  
Executive Director

Leonard Cramer  
Fred Dawkins

Robert Dresser  
Marina Estrada  
Ron Gray

Dean Lan  
Shauna Long  
John O'Neill

Bruce Pomer  
Andres Rosen



Affirmative Action/Equal Opportunity Employer

## Office of the Sacramento City Council

**RECEIVED**

JUN 11 1987

MEMORANDUM

DATE: <sup>CITY ATTORNEY'S OFFICE</sup> June 9, 1987

TO: Mayor and City Councilmembers

FROM: David M. Shore *DMS*  
Councilmember, District 1

SUBJECT: ORDINANCE TO BAR DISCRIMINATION BY CLUBS OR ORGANIZATIONS WHICH ARE NOT DISTINCTLY PRIVATE

Please find attached a draft ordinance based on the one recently adopted by the cities of Los Angeles and New York regarding the barring of discrimination by private clubs that are not distinctly private. This includes discrimination based on sex. I plan to suggest to the city attorney that it also include sexual orientation, and the handicapped.

It is clear, based on a recent supreme court decision, that the city has the legal ability to regulate in this area. We, as a city, should act to ensure that private clubs that create economic opportunities be open to everyone. As we all know, these clubs are places where people conduct business and have the opportunity to advance their professional careers. Women should not be excluded from these opportunities.

For the purpose of this ordinance, a club or organization shall be considered "not distinctly private" if it satisfies the following criteria:

1. Has more than 100 members;
2. Provides regular meal service; and
3. Regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of non-members for furtherance of trade or business.

As noted, discriminatory practices in the nature of membership in certain clubs and organizations can be a barrier to the advancement of women and minorities in the business or professional life of Sacramento. It is within these organizations that personal contacts can prove invaluable for business, employment and professional advancement.

RE: Draft Ordinance  
June 9, 1987  
Page 2 of 2

Such organizations claim to be private clubs. However, business meetings and related activities often occur at these clubs. Furthermore, dues are often paid by employers, since the employees activities, including hosting and entertaining current or prospective clients, unquestionably furthers the employers business. Such practices clearly provide benefits to the businesses involved and to persons other than members. Clearly, such clubs are undeniably "not distinctly private" in nature.

Remedies include the right of any person to bring a civil action to enforce this ordinance. An injunction to prevent such discrimination may be obtained. Further, penalties may include actual damages, in such amount as may be determined by a court, of up to a maximum of three times the amount of actual damage but in no case less than \$250.00, and such attorney fees and court costs as may be determined. Further, punitive damages may be awarded in a proper case.

I have referred this ordinance to the city attorney for review along with a legal brief provided by the city of Los Angeles. It is my desire to schedule this in the near future before the Law and Legislative Committee, and then the full council. Thank you for your help in this matter.

DMS/

cc: Jim Jackson  
City Attorney

**DRAFT ONLY**

PROHIBITION AGAINST DISCRIMINATION BY  
CLUBS OR ORGANIZATIONS WHICH ARE NOT  
DISTINCTLY PRIVATE

Sec. \_\_\_\_\_. Findings and Purpose.

After public hearing receipt of testimony, the City Council finds and declares:

That a significant barrier to the advancement of women and minorities in the business and professional life of the City exists by virtue of the discriminatory practices of certain clubs or organizations which are not distinctly private and where business is frequently conducted.

That while such clubs or organizations may avowedly be formed for social or civic purposes, the extent to which many of the activities therein have had a prejudicial impact on the business, professional and employment opportunities of women and minorities cannot be ignored or minimized.

That business activity most frequently occurs in clubs or organizations having more than four hundred members which provide regular meal services which facilitates conducting such business.

That the dues and expenses of members at such clubs or organizations are often paid by their employers because the employee's activities at said clubs or organizations serve to develop and enhance the employer's business.

That such clubs or organizations also rent their facilities for use as conference rooms for business meetings attended by non-members.

That the City of Sacramento has a compelling interest in eradicating discrimination based on sex, race, color, religion, ancestry, or national origin in order to assure all of its citizens a fair and equal opportunity to participate in the business and professional life of the City. Conduct and practices which exclude persons from entry or consideration for membership in or the full advantages and privileges of such membership on these bases are discriminatory and unacceptable, are injurious to the body politic and to the business community in the City of Sacramento .

**DRAFT ONLY**

Proposed Ordinance  
Page 2.

Accordingly, the City's interest in eliminating such practices in clubs or organizations covered by this Article outweighs the interest of their members in private association.

Section \_\_\_\_\_ Definitions.

A. For purposes of this Article, a club or organization (hereafter "club") which is not distinctly private is any organization, institution, club or place of accommodation which satisfies the following requirements:

1. Has membership of whatever kind totalling 400 or more;  
and

2. Provides regular meal service by providing either directly or indirectly under a contract with another person, any meals on three or more days per week during two or more weeks per month during six or more months per year; and

3. Regularly accepts payments:

a) from non-members for expenses incurred at the club by members or non-members in the furtherance of trade or business; or

b) on behalf of non-members for expenses incurred at the club by non-members in the furtherance of trade or business."

B. "Regularly accepts payment" as used in this Article shall mean a club accepting as many payments during the course of a year as the number of weeks any part of which the club is available for use by members or non-members per year; the payments may be for dues, fees, use of space, facilities, services, meals or beverages.

C. "Furtherance of trade or business" as used in this Article shall mean payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual's employer or by a trade or business organization, or other payment made in connection with an individual's trade or business, including entertaining clients or business associates, holding meetings or other business-related events.

Section \_\_\_\_\_ Prohibition Against Discrimination.

A. It shall be unlawful for a club which is not distinctly private to deny to any person entry to facilities at,

**DRAFT ONLY**

Proposed Ordinance  
Page 3.

membership in, or the full enjoyment of said club or organization on the basis of sex, race, color, religion, ancestry, or national origin.

B. The provisions of this Article shall not apply to an institution organized and operated exclusively for religious purposes as provided in 26 U.S.C. Section 501(c)(3).

Section \_\_\_\_\_ Enforcement and Penalties.

(A) Civil Action.

Any person may enforce the provisions of this Article by means of a civil action. The City of Sacramento may also enforce the provisions of this Article by means of a civil action.

(B) Injunctions.

1) Any person who commits an act, or proposes to commit an act, or engages in any pattern and practice of discrimination in violation of Section \_\_\_\_\_ may be enjoined therefrom by any court of competent jurisdiction.

2) Action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class.

(C) Penalties.

Any person who violates, or aids or incites another person to violate, the provisions of this Article is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than two hundred fifty dollars (\$250), and such attorney's fees and court costs as may be determined by the court in addition thereto, suffered by any aggrieved party. In addition, the court may award punitive damages in a proper case.

(C) Non-exclusive Remedies and Penalties.

Nothing in this Article shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

Section \_\_\_\_\_. Non-Criminal Penalties.

Notwithstanding any provision of this code to the contrary, no criminal penalties shall attach for any violation of the provisions of this Article.