

STATE OF WISCONSIN
CIRCUIT COURT
DANE COUNTY
BRANCH III

PHILIP ALTHOUSE, JOEL FEDERMAN, RICHARD SATRAN, INNERCITY ACTION PROJECT HOUSING INSPECTION OFFICE, <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">vs.</p> JAMES GOULETTE, <p style="text-align:center">Defendant</p>	MEMORANDUM DECISION Case No. 2164
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This is a small claims action for a money judgment in the amount of \$998.60.

The plaintiff's complaint alleges as follows:

Plaintiff Inner City Action Project Housing Inspection Office (hereinafter ICAP) is an unincorporated association whose principal place of business is located at 511 Memorial Union in the City of Madison, Dane County, Wisconsin.

The members of ICAP hold the belief, political in nature, that the housing codes of the City of Madison should be strictly enforced in rental housing. To achieve this goal, staff members of ICAP, some of whom have been trained by the City of Madison Building Inspection Department, inspect rental housing in the City of Madison. The staff members report violations of the building codes they discover to the landlord/owners, to the City Building Inspection Department, and to other appropriate governmental agencies, or assist the tenant in taking legal action to have the violations corrected.

Plaintiff Althouse is now employed and has been employed for the last two years by ICAP.

Plaintiff Satran, at the time of the events complained of in this suit was employed as City editor by the Daily Cardinal, a University of Wisconsin student newspaper. The staff of the Cardinal is generally believed to hold left wing political views, and to advocate those views through publication of the paper.

Defendant Goulette is the owner of property located at 453 West Mifflin Street in the City of Madison and possesses the right to rent the housing there.

On May 20, 1976, the three individual plaintiffs met with defendant Goulette and expressed an interest in renting premises located within the building at 453 West Mifflin Street.

On May 25, 1976, defendant Goulette telephoned I.R. Jacobson, who was at that time renting other premises to plaintiff Althouse.

Mr. Jacobson informed Mr. Goulette that plaintiff Althouse worked for an organization the members of which engaged in inspecting rental housing in Madison and attempting to secure correction of housing code violations in that housing.

Defendant Goulette and Mr. Jacobson also discussed in this telephone conversation the fact that plaintiff Satran worked for the Daily Cardinal and on information and belief, Mr. Goulette commented that he'd had trouble with Cardinal Staff people before.

On the basis of the information he had received from Mr. Jacobson about the political beliefs of plaintiff Althouse and Satran, and their activities in pursuit of those beliefs, defendant Goulette decided not to rent to the three individual plaintiffs.

On May 26, 1976, defendant Goulette telephoned plaintiff Federman and informed him that he would not rent to the three.

This refusal to lease the premises to the three was a violation of Madison General Ordinances Section 3.23(4) (a), violated plaintiffs Althouse and Satran's right to be free from discrimination because of their political beliefs, and violated plaintiff Federman's right to access to housing free from discrimination on the basis of political beliefs.

Plaintiff ICAP was injured by this violation of law in that discrimination against their staff members in their attempts to lease housing inhibits the ability of ICAP to recruit and maintain staff persons, and has a chilling effect on the pursuit by ICAP of the legally protected goals of the organization.

In response to the plaintiff's complaint, the defendant moved the Court to dismiss the complaint on the following grounds:

That the plaintiff, Inner City Action Project Housing Inspection Office, lacks standing to sue.

That the complaint fails to state a claim on behalf of the plaintiff, Inner City Action Project Housing Inspection Office.

That the plaintiffs have failed to exhaust their administrative remedies prior to bringing suit.

That as to plaintiff, Phillip Althouse, this Court lacks jurisdiction over this matter for the reason that there is another action pending between the same parties for the same cause before the Equal Opportunities Commission of the City of Madison.

That as to all plaintiffs, the complaint fails to state a claim upon which relief can be granted against the defendant in that the ordinance does not give the right to sue for money damages.

That as to all plaintiffs, the complaint fails to state a claim upon which relief can be granted against the defendant in that the ordinance gives no independent right to sue and that there is no other common or statutory law giving the plaintiffs the right to sue in this court.

That as to Plaintiff, Joel Federman, that the complaint fails to state a claim against the defendant as it does not allege any act of discrimination against said plaintiff for political beliefs.

That the complaint is based upon City of Madison General Ordinance 3.23 which is unconstitutional and void for the reason that it is vague and overbroad.

The respective parties filed their briefs and did, thereby, submit the issue of dismissal to the Court. The parties stipulated that the plaintiff, Inner City Action Project Housing Inspection Office lacks standing to sue and they further stipulated the complaint, therefore, fails to state a claim on the behalf of ICAP.

Pursuant to the stipulation of the parties, therefore, the Court grants the defendant's motion on grounds one and two and orders the plaintiff's complaint as to that plaintiff be and the same is hereby dismissed.

The defendant has based his motion to dismiss on several constitutional and procedural issues. If the Court finds that the determination of a single issue can dispose of the matter, the Court need not, therefore, reach all the other issues raised by the defendant.

The principal question raised by the defendant's motion to dismiss is whether or not the City of Madison has the power to create the civil cause of action under Madison General Ordinances Section 3.23(9). The Court finds and determines that it does not and that said ordinance is violative of Article 11, Section 3 of the Wisconsin Constitution and Section 62.11(5) of the Wisconsin Statutes.

Madison General Ordinance 3.23 is a broad ranging ordinance created for the purpose of promoting nondiscrimination and equal opportunities. Section 3.23(4), prohibiting discrimination in housing, is derived

from and authorized by Section 66.432 of the Wisconsin Statutes. This statute authorizes the creation of municipal forfeiture actions for violations of Equal Opportunity Ordinances.

The Madison Ordinance provides extensive procedures for dealing with alleged violations. For example, an Equal Opportunity Commission has been established to investigate complaints and, if it finds there is probable cause to believe that discrimination has been committed, to "endeavor to eliminate the practice by conference, conciliation or persuasion." Madison General Ordinance Section 3.23(10)(c)3a. The Commission may order remedial action. Madison General Ordinance Section 3.23(10)(c)3b. Also, the Commission may seek judicial enforcement of the ordinance via a forfeiture action. Madison General Ordinance Section 3.23(10)(c)4. However, in addition to the above procedure, the ordinance provides that:

"All persons shall have the right to be free from any discrimination forbidden by this ordinance and shall have recourse to the courts in a civil action to enforce such rights." Madison General Ordinance Sec. 3.23(9)

It is under this section of the Equal Opportunity Ordinance that the plaintiffs brought this civil suit action seeking money damages in the amount of \$998.60.

Under the law, the plaintiffs must state a cause of action for the relief of money damages which they seek.

The plaintiffs' complaint is that they have been discriminated against because of their political beliefs. That does not state a cause of action which exists at common law. Nor does it state a cause of action which has been created by the State. Section 101.22 of the Wisconsin Statutes. The sole basis for the plaintiffs' cause of action is that it is authorized by Madison General Ordinance Section 3.23(9).

Article 11, Section 3 of the Wisconsin Constitution and Section 62.11(5) of the Wisconsin Statutes grants to municipal corporations home rule. This power is to be liberally construed. Section 62.04 Wisconsin Statutes. Our Supreme Court has long supported a liberal construction of the home rule power:

"A city operating under a general charter, finding no limitations in express language, has under the provisions of this chapter, all the powers that the legislature could by any possibility confer upon it" Hack v. Mineral Point, 203 Wis. 215 (1931).

Thus, the authority of the City is, indeed, broad.

However great this power is, it does not confer upon the City of Madison the "dignity of a sovereign". State ex rel. Keefe v. Schmiede, 251 Wis. 79 (1947). Only the State, and the Federal Government has the dignity of a sovereign. Section 1.01 Wisconsin Statutes. A mere city such as Madison, no matter how great its home rule authority, cannot exercise sovereign power.

While there appears to be no Wisconsin authority directly on point, an examination of other states reveal that only a sovereign can create a civil cause of action:

"A municipal ordinance cannot create a civil liability against a person violating it, and in favor of persons injured by its violation, for this is a power which belongs to the sovereign power of the state. The only liability which attaches to an infraction of such ordinance is the penalty it imposes." Moran v. Pullman Palace Car Co., 134 Mo. 641, 36 S.W. 659 (1896)

See also Philadelphia & Reading Railroad v. Ervin, 89 Pa. St. 71 (1879). Thus, just as only a sovereign may create a crime, Keefe v. Schmiede, supra, only a sovereign may create a civil cause of action.

Inasmuch as the City of Madison did not and does not have the dignity of a sovereign, it should not and cannot, therefore, create a civil cause of action. In adopting Section 3.23(9) of the Madison Equal Opportunity Ordinance, there is no doubt the City exceeded its constitutional authority. Since the plaintiffs' complaint is based upon that section of the ordinance, the complaint is defective inasmuch as it fails to state a cause of action.

The defendant's motion for dismissal is, therefore, granted and the case taken off the jury calendar. The Court need not, therefore, consider the other issues raised. The ruling of the Court that this section of the Equal Opportunity Ordinance is unconstitutional, does not affect the other sections of that ordinance.

The attorney for the defendant shall, therefore, draft an order of dismissal accordingly forthwith.

Dated at Madison, Wisconsin this 8th day of December, 1976.

BY THE COURT:

Judge Archie E. Simonson