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OPINION	:	No. 81-1106
	:	
of	:	<u>SEPTEMBER 23, 1982</u>
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JEFFREY A. WALTER, PROSECUTING ATTORNEY, CITY OF COTATI, has requested an opinion on a question we have phrased as follows:

May a general law city enact an ordinance which would prohibit the management of a mobilehome park, which offers mobilehome sites for rent to mobilehome owners, from enforcing a park rule that restricts residents of the mobilehomes to "adults only" unless such "adults only" rule is formulated to limit residents to persons 62 years of age or older?

CONCLUSION

A general law city may not lawfully enact an ordinance which would prohibit the management of a mobilehome park, which offers mobilehome sites for rent to mobilehome owners, from enforcing a park rule that restricts residents to "adults only."

ANALYSIS

In 1978 the Legislature enacted the Mobilehome Residency Law. (Civ. Code, §§ 798-799.6.) Within this statutory scheme a "mobilehome park" is defined as "an area of land where two or more mobilehome sites are rented, or held out for rent, to accommodate mobilehomes used for human habitation." (Civ. Code, § 798.4.) "Management" is described as the "owner of a mobilehome park or an agent or representative authorized to act on his behalf in connection with matters relating to a tenancy in the park." (Civ. Code, § 798.2.) A "tenant" is identified as a "person who has a tenancy in a mobilehome park under a rental agreement." (Civ. Code, § 798.9.) A "resident" is defined as a "tenant or other person who lawfully occupies a mobilehome." (Civ. Code, § 798.11.) The rental agreement must be in writing and must include, among other items, the "rules and regulations of the park." (Civ. Code, § 798.15.)

Of particular interest, for purposes of this opinion, is Civil Code section 798.76¹ which provides:

"The management may require that a purchaser of a mobilehome which will remain in the park, comply with *any rule or regulation limiting residence to adults only*." (Emphasis added.)

In *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, the California Supreme Court characterized this provision as an explicit legislative authorization of an "adults only" restriction and an exception to the Unruh Civil Rights Act. (Civ. Code, § 51 et seq.)² *Marina Point* must be discussed in detail.

In *Marina Point* the court found that a "no children" policy in a private apartment complex with rental units open to the public violated the Unruh Act. The court determined that children, parents with children and families with children were persons protected by the Unruh Act from arbitrary discrimination by business establishments and

¹ See also Civil Code section 799.5, a similar provision relating to the purchaser of a mobilehome in a mobilehome subdivision, cooperative or condominium. The question asked concerns "mobilehome parks" operated as businesses in which sites are available for rent to persons owning mobilehomes. The proposed ordinance does not purport to regulate mobilehome subdivisions, cooperatives or condominiums.

² Civil Code section 51 provides in part 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."

that a blanket exclusion of all such persons from such apartment houses was impermissible.³ Nevertheless, the court distinguished this unlawful exclusionary practice from "the age-limited admission policies of retirement communities or housing complexes reserved for older citizens." (30 Cal.3d at 742.) The court determined that an age qualification for admission to a housing facility reserved for older citizens "can operate as a reasonable and permissible means under the Unruh Act of establishing specialized facilities for those particularly in need of such services or environment." (30 Cal.3d at 743.) The court in this regard took special notice of mobilehomes (30 Cal.3d at 743, fn.11):

"In light of the housing special [sic] needs of older citizens, the New Jersey Supreme Court, in the *Weymouth* case [*Taxpayers Assn. of Weymouth Tp. v. Weymouth Tp.* (1976) 71 N.J. 249; 364 A.2d 1016] quoted at length in footnote 10, upheld the validity of a municipal zoning ordinance setting aside a portion of land for use as a mobile home park for older citizens. In reaching its conclusion, the court observed: 'The role which mobile home developments can play in satisfying the special needs of the State's senior citizens is evident. First, mobile homes provide a relatively inexpensive form of housing at a time when the demand for such housing and its availability is limited . . . Second, mobile home developments afford the elderly the age-homogeneous environments which many older persons now seek and desire. Finally, the size of mobile homes is ideal for older persons with both physical and financial limitations. . . .' (364 A.2d at p. 1029.)

"These special features of mobile home parks, which correlate closely with the special needs of older citizens, may well explain *the fact that mobile home parks constitute the only housing facilities in which the California Legislature has explicitly authorized 'adult only' restrictions.* (See Civ. Code, §§ 798.76, 799.5.)" (Emphasis added.)

The California Supreme Court in *Marina Point* does not specify what age-limited admission policy results in a private housing facility being characterized as a specialized housing institution for older citizens and, as such, exempt from the Unruh Act. The *Weymouth* case, relied on by the court, involved mobilehome parks zoned by local ordinance for "elderly persons" defined as persons 52 years or older and for "elderly families" defined as families whose heads of household are 52 years or older. (*Taxpayers Assn. of Weymouth Tp. v. Weymouth Tp.* (1976) 71 N.J. 249; 364 A.2d 1016, 1021.)

³ The list of bases of discrimination in the Unruh Act has been deemed illustrative rather than restrictive. (*In re Cox* (1970) 3 Cal.3d 205, 216.) Neither the United States Constitution nor the California Constitution specifically prohibits discrimination on the basis of age. This opinion, like the *Marina Point* opinion, will be limited to a discussion of the Unruh Act.

The holdings of the *Marina Point* case are that an apartment house offering rental units is a public accommodation subject to the Unruh Act and that the banning of children from such an accommodation is a type of arbitrary discrimination prohibited by that act. The case, however, does not purport to bar all age-limited admission policies in housing. *Marina Point* recognizes that persons upon retirement or upon aging may seek a residential environment free of children. Persons, however, retire at different ages, and the definition of who is "older," "elderly" or "senior" varies. (See 64 Ops.Cal.Atty.Gen. 173, 178 fn. 3.)

The *Marina Point* court has unequivocally found "mobile home parks constitute the only housing facilities in which the California Legislature has explicitly authorized 'adult only' restrictions" (*Marina Point* 30 Cal.3d at 743, fn. 11; see also 736, fn.7). May a general law city, nevertheless, by ordinance ban such restrictions unless such restrictions are formulated to limit residents to persons 62 years of age or older? In our opinion such a city ordinance would be void.

Under the California Constitution, a city is authorized to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general law." (Cal. Const., art. XI, § 7; see also Gov. Code, § 37100.) An ordinance of a general law city will be invalidated if it directly conflicts with the general law by permitting what is prohibited by state law or prohibiting what is permitted by state law. (*Ex parte Daniels* (1920) 183 Cal. 636, 647; *In re Portnoy* (1942) 21 Cal.2d 237, 240; *People v. Orozco* (1968) 266 Cal.App.2d 507, 511.)

The Mobilehome Residency Law does not define the term "adults only."⁴ It could mean a rule limiting residents to persons 18 years of age or older. On the other hand,

⁴ The definition of "adult" is found in Civil Code section 25.1:

"The Legislature intends that any use of or reference to the words 'age of majority,' 'age of minority,' 'adult,' 'minor,' or words of similar intent in any instrument, order, transfer, or governmental communication whatsoever made in this state:

"(a) Before March 4, 1972, shall make reference to persons 21 years of age and older, or younger than 21 years of age, and

"(b) On or after March 4, 1972, shall make reference to persons 18 years of age and older, or younger than 18 years of age.

"Nothing contained herein or in Chapter 1748 of the Statutes of 1971 shall prevent the amendment of any court order, will, trust, contract, transfer, or instrument to refer to the new 18-year-old age of majority where such court order, will, trust, contract, transfer, or instrument is:

"(1) In existence on March 4, 1972; and

the term could embrace a variety of more narrowly defined adult only rules. An adults only device might mean "45 or older only" or "65 or older only"; it might also mean "single adults only." (See Travaglio, *Suffer the Little Children—But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing* (1979) 40 Ohio St.L.J. 295, 296.) The proposed ordinance would permit a "62 or older only" rule. Obviously, an adults only rule, however drafted, would bar children as residents.

Since Civil Code section 798.76, as construed in *Marina Point*, sanctions adults only provisions generally for mobilehome parks, the proposed ordinance would directly conflict with this state law by prohibiting what the state law now allows. Moreover, the *Marina Point* case noted with approval *Taxpayers Assn. of Weymouth Tp. v. Weymouth Tp.*, *supra*, 71 N.J. 249, 364 A.2d 1016, which involved a mobilehome park age-limited to persons 52 years or older. The proposed ordinance, in contrast, would authorize such an admission practice covering only persons 62 years or older.⁵

In 61 Ops.Cal.Atty.Gen. 320 (1978) we concluded that a movie theater consistent with the Unruh Act could place restrictions on the access of juveniles by establishing reasonable regulations rationally related to the services performed and the facilities provided. Mobilehome parks, by reason of their purpose, operation or physical design, may or may not wish to exclude children as residents. The *Marina Point* court has determined that the Legislature, in Civil Code section 798.76, has carved out an exception to the Unruh Act which would permit such an exclusion.

We conclude that a general law city may not lawfully enact an ordinance which would prohibit the management of a mobilehome park, which offers mobilehome sites for rent to mobilehome owners, from enforcing a park rule that restricts residents to "adults only."

"(2) Subject to amendment by law and where amendment is allowable or not prohibited by the terms thereof; and

"(3) Otherwise subject to the laws of this state."

⁵ In view of our conclusion, we do not reach the question of whether or not the ordinance, by excluding all persons under age 62, is constitutionally defective as overbroad. (See *American Booksellers Assn., Inc. v. Superior Court* (1982) 129 Cal.App.3d 197, 205.)