

Department Act which provides in part that a licensee must be one who possesses a “. . . good business reputation and has the responsibility, general character and fitness for the business which are such as to command the confidence of the public and to warrant the belief that the applicant’s activities will be honestly and efficiently conducted. . . .” 40 P. S. § 291. The Insurance Commissioner “may, in his discretion, suspend or revoke or refuse to renew the license” of any licensee who is disqualified by section 651, 40 P. S. § 293. It seems, therefore, that a licensee under 40 P. S. § 291 who is in violation of state laws and strong public policy against discrimination fails “to command the confidence of the public.”

To obtain a license, a public adjuster must possess “trustworthiness and competency to transact the business of public adjusters in such a manner as to safeguard the interests of the public.” 40 P. S. § 304. One clearly does not exhibit the capacity to “safeguard” the interests of the public when one engages in discriminatory practices prohibited by the laws and public policy of this state. The Insurance Commissioner is authorized to revoke the license of public adjusters who have “violated any provisions” of the Insurance Department Act. 40 P. S. § 306.

In summary, the Insurance Commissioner can refuse to issue or renew licenses to, and revoke or suspend licenses of licensees under the Insurance Department Act and Insurance Company Law, who discriminate on the basis of race, color, religious creed, sex or national origin in their employment policies. Since the Insurance Commissioner has the duty to insure that the insurance laws of this Commonwealth are observed, he should adopt regulations which will implement this opinion. We urge that such regulations be promulgated at the earliest possible date and that they be drafted in a manner which will provide all current and potential license holders with adequate notice and explanation of the standards to which they will be held.

Sincerely yours,

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OFFICIAL OPINION No. 75-43

Department of Agriculture—Grants—Reimbursements—Harness Racing Act of 1969—County agricultural societies, independent agricultural societies, and other organizations conducting annual agricultural fairs—Sex discrimination—Fourteenth Amendment—Article I, § 28 of the Pennsylvania Constitution.

1. The Fourteenth Amendment to the United States Constitution and Article I, § 28 of the Pennsylvania Constitution prohibit the disbursement of State funds pursuant to Section 16 of the Harness Racing Act of 1959 to any organization conducting an annual agricultural fair when that organization discriminates in membership on the basis of sex.

Harrisburg, Pa.
November 12, 1975

Hon. James A. McHale
Secretary of Agriculture
Harrisburg, Pennsylvania

Dear Secretary McHale:

You have asked our office whether the Department of Agriculture can legally award grants and make reimbursements pursuant to Section 16 of the Harness Racing Act of 1959, as amended, 15 P. S. § 2616(d) (e.1) to county agricultural societies, independent agricultural societies, and other organizations conducting annual agricultural fairs when those organizations discriminate in membership on the basis of sex. It is our opinion, and you are advised, that the Department of Agriculture may not award such grants and reimbursements to such organizations that discriminate in membership on the basis of sex.

The Pennsylvania Department of Agriculture is responsible for awarding grants and making reimbursements to county agricultural societies, independent agricultural societies and other organizations conducting agricultural fairs as defined by the Act. In carrying out this responsibility, the Secretary of Agriculture must comply with the requirements of the State and Federal Constitutions. As the Supreme Court of the United States stated in *Cooper v. Aaron*, 358 U. S. 1, 18 (1958):

“No state legislator or executive or judicial officer can war against the constitution without violating his undertaking to support it.”

Chief Justice Marshall spoke for unanimous court in saying that:

“If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery. . . .”

The Fourteenth Amendment to the United States Constitution provides in pertinent part: “no state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The courts have held that the “Fourteenth Amendment prohibits state discriminatory action of every kind, including state participation through any arrangement, management, funds or property.” *Arrington v. City of Fairfield, Alabama*, 414 F. 2d 687, 688 (5th Cir. 1969). See also *Norwood v. Harrison*, 413 U. S. 455 (1973); *Cooper v. Aaron, supra*. Specifically, the courts have held that providing financial assistance to organizations which unlawfully discriminate in their membership constitutes

state action within the meaning of the Fourteenth Amendment and, thus, the State is forbidden from providing financial assistance to such organizations. *Falkenstein v. Department of Revenue For the State of Oregon*, 350 F. Supp. 887 (D. Ore. 1972), *stay den.*, 409 U. S. 1032 (1972), *app. dism.*, 409 U. S. 1099 (1973); *Pitts v. Department of Revenue for State of Wisconsin*, 333 F. Supp. 662 (E. D. Wis. 1971). Discrimination in membership solely on the basis of the sex of the individual by organizations receiving state funds to conduct agricultural fairs is clearly the kind of discrimination prohibited by the Fourteenth Amendment. (See *Reed v. Reed*, 404 U. S. 71 (1971)).

The Constitution of Pennsylvania sets forth the policy of the Commonwealth with regard to discrimination in general. Article I, § 26 of the Pennsylvania Constitution provides that:

“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”

With specific regard to sex discrimination, Article I, § 28 of the Pennsylvania Constitution (hereinafter referred to as the Equal Rights Amendment) provides that: “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.” Thus far, when deciding cases under the Equal Rights Amendment, the courts of Pennsylvania have consistently refused to uphold any difference in treatment on the basis of sex wherever there is State involvement. For example, see *DiFlorido v. DiFlorido*, 459 Pa. 641, 331 A. 2d 174 (1975); *Commonwealth v. Butler*, 458 Pa. 289, 328 A. 2d 851 (1974); *Henderson v. Henderson*, 458 Pa. 97, 327 A. 2d 60 (1974); *Hopkins v. Blanco*, 457 Pa. 90, 320 A. 2d 139 (1974); *Conway v. Dana*, 456 Pa. 536, 318 A. 2d 324 (1974); *Commonwealth v. PIAA*, 18 Pa. Commonwealth Ct. 45, 334 A. 2d 839 (1975); *Percival v. City of Philadelphia*, 12 Pa. Commonwealth Ct. 628, 317 A. 2d 667 (1974); *Wiegand v. Wiegand*, 226 Pa. Superior Ct. 278, 310 A. 2d 426 (1973); *Commonwealth ex rel. Lukens v. Lukens*, 224 Pa. Superior Ct. 227, 303 A. 2d 522 (1973); *DeRosa v. DeRosa*, 60 D. & C. 2d 71, 60 Del. Co. 259 (1972); *Corso v. Corso*, 59 D. & C. 2d 546, 120 P. L. J. 183 (1972).

The Commonwealth Court stated in the decision of *Commonwealth v. PIAA*, *supra*, that “since the adoption of the Equal Rights Amendment in the Commonwealth of Pennsylvania, the courts of this state have unfailingly rejected statutory provisions as well as case law principles which discriminate against one sex or the other.” 334 A. 2d at 841. The court also stated that “the concept of ‘equality of rights under the law’ is at least broad enough in scope to prohibit discrimination which is practiced under the auspices of what has been termed ‘state action’ within the meaning of the Fourteenth Amendment to the United States Constitution.” 334 A. 2d 842.

Thus, the Equal Rights Amendment would prohibit the State from discriminatory action of every kind “including state participation

through any arrangement, management, funds or property." See *Ar-rington v. City of Fairfield, Alabama, supra*. The making of a state grant to an organization which denies a person membership in that organization because of the person's sex clearly constitutes that kind of unlawful discrimination.

Therefore, it is our opinion, and you are advised, that both the Fourteenth Amendment to the United States Constitution and the Equal Rights Amendment to the Pennsylvania Constitution prohibit the disbursement of State funds to organizations conducting annual agricultural fairs when those organizations discriminate in membership on the basis of sex.

Very truly yours,

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VINCENT X. YAKOWICZ
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OFFICIAL OPINION No. 75-44

State Workmen's Insurance Fund—Audit by Insurance Commissioner.

1. The Insurance Commissioner cannot properly audit the Fund which he is responsible for administering as a member of the Fund.
2. Article VIII, § 10 the Pennsylvania Constitution precludes charging any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth with the function of auditing that transaction after its occurrence.

Harrisburg, Pa.
December 1, 1975

Honorable William J. Sheppard
Insurance Commissioner
Harrisburg, Pennsylvania

Dear Commissioner Sheppard:

We have your request for an opinion as to the legality of your serving the State Workmen's Insurance Fund in a dual capacity as a member of the board under the provisions of the Act of June 2, 1915, P. L. 762 § 2, 77 P. S. § 211, and conducting an audit of the fund under the provisions of the Act of May 1, 1933, P. L. 102 § 1, 77 P. S. § 345 in light of the provisions of Article VIII, § 10 of the Pennsylvania Constitution. It is our opinion, and you are hereby advised, that the Insurance Commissioner cannot properly audit the fund which he is responsible for administering as a member of the Fund.