June 16, 2005

To: Sheila, Investigators, Pat and Fran

From: John E. Carnes, Commission Counsel

Question: Does a Person Denied the Opportunity to Become a Volunteer with a Place of Public Accommodation State a Claim Under the MHRA?

As you will recall, there have been a number of cases in the past that at least implied that the benefit of serving as a member of a volunteer fire department is a "service" offered to the general public and, therefore, rejection of a female applicant is a violation of public accommodation law. See for example, Shepherdstown Vol. Fire Dept. v. State, 309 S.E. 2d 342 (W. Va. 1983). Of course, if the "volunteer" department provides the equivalent of compensation, e.g., uniforms, stipend, training courses paid by the department, etc, there may well be an employer-employee relationship. That may also be the case if the "volunteer" position is the only or primary means of obtaining a paid position.

On the other hand, the federal district court in Bauer v. Muscular Dystrophy Ass'n, 14 AD Cases 1599 (D. Kan. 2003), recently held that disabled individuals who were denied the opportunity to volunteer at a summer camp for children with disabilities were not unlawfully denied access to a place of public accommodation. The court ruled that Title III of the ADA applies to customers or patrons, not volunteers who perform tasks at the direction of the public accommodation.

Bauer seems quite persuasive. So, unless there is evidence supporting an employer-employee relationship, true volunteers are not covered by the public accommodation provisions of the MHRA because they are neither patrons nor customers. This view may change if the case law develops more fully. Of course, the Commission can always consider legislation if it concludes that discrimination against volunteers because of race, sex, etc., is a problem that needs to be addressed by the Act.