

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Senator Grothman:

We are not able to determine whether the income and asset limits in created s. 66.1204 (1) (b) 2. are consistent with the definition of “persons of low income” in s. 66.1201 (3) (m), which is determined independently by each housing authority in the state. Similarly, we are not able to determine whether the income and asset limits created in s. 234.038 (1) (b) 2. are consistent with the definition of “persons and families of low and moderate income” under s. 234.01 (10). Do you want to change the current law definition of “persons of low income” or “persons and families of low and moderate income?”

Sections 66.1204 (1) (b) 3., 234.038 (1) (b) 3., and 560.9803 (2m) (a) 3. contain provisions similar to the following: “no adult . . . may spend the night in the home of any person of low income who receives housing or housing assistance in or from any project or program under this subchapter if the income of that adult was not considered in determining the eligibility of the person to receive housing or housing assistance. Any person who violates this subd. 3. a. is guilty of a Class A misdemeanor.”

Although we have not had time to conduct extensive legal research on this topic, it is possible that these provisions could be challenged as a violation of an individual’s constitutional right to freedom of association, privacy, and right to due process. Specifically, if these provisions become law, it could be argued that a person of low income is being denied the right to freely associate with an adult of his or her choosing without being subject to a penalty. Similar penalties do not apply to an individual who receives medical assistance, SSI, or many other government benefits other than housing assistance.

In the area of freedom of association, the U.S. Supreme Court has recognized two distinct lines of cases — one of which deals with personal relationships. Regarding these, the “Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. . . . The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal

relationships a substantial measure of sanctuary from unjustified interference by the State.” *Roberts v. United States Jaycees*, 468 U.S. 609, 617-618 (1984).

The application of this rule to created ss. 66.1204 (1) (b) 3., 234.038 (1) (b) 3., and 560.9803 (2m) (a) 3. is not clear. In one case, *McKenna v. Peekskill Housing Authority* 647 F.2d 332 (2nd Circuit 1981), the court held that a housing authority’s rule that a tenant must disclose to the landlord the names of those persons whom the tenant wishes to have as overnight guests improperly limited the tenant’s freedom to associate and right to privacy. The court held that while the housing authority had a legitimate interest in maintaining safe, decent housing and keeping track of occupancy, its rule was neither reasonable nor the least intrusive means to achieve its goal.

Basing its decision on 42 USC 1437d (l) (2) and 24 C.F.R. 966.4 (d) (1), the federal district court in *Diggs by Diggs v. The City of Frederick Housing Authority*, 67 F. Supp. 2d 522 (1999), “finds that the [federal housing] regulation substantively prohibits public housing authorities from unreasonably interfering with tenants’ ability to entertain guests in the tenants’ public housing apartments.” *Diggs* at 532. Although we are not certain, it appears that these federal statutes and regulations apply to public housing authorities in this state.

Other cases, however, such as *Thompson v. Ashe*, 250 F. 3d 399 (6th Circuit 2001), have taken a much more narrow view of the rights of individuals to visit tenants of public housing developments. In *Thompson*, the court held that the housing authority’s “no trespass” policy, which placed on the “banned” list persons involved in drug activity or violent criminal activities without employing any formal criteria, did not violate the rights of a would-be visitor. In fact, the *Thompson* court held that the plaintiff, Mr. Thompson, “has no fundamental right to visit his family members on KCDC property.” *Thompson* at 407.

It is difficult to predict how a court would rule should this bill become law and should someone challenge the provisions contained in ss. 66.1204 (1) (b) 3., 234.038 (1) (b) 3., and 560.9803 (2m) (a) 3., but we thought that you should at least be aware of some of the leading cases in this area. Please let us know if you have any further questions about this issue.

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