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VOLUNTARY PLANS TO PREVENT DE FACTO SEGREGATION IN HOUSING RECEIVE STATUTORY PROTECTION IN INDIANA

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Indiana's Civil Rights Commission has long agonized over the problem of preventing de facto segregation in housing. Shortly after the first Negro moves into an all white area, the whites depart and the area again becomes racially segregated. This departure of the white families is caused as much by their fear of finding themselves in the minority as by their fear of declining property values.

The Civil Rights Commission felt that Section 608 of the Model Anti-Discrimination Act[1] was an instrument which could be used effectively in solving this problem. It thought that instead of exiting, the whites in a newly integrated area would take advantage of an opportunity to develop a plan to prevent a disproportionate number of Negroes from moving in. The Model Anti-Discrimination Act, Section 608 provides:

> It is not a discriminatory practice for any person subject to this chapter to adopt and carry out a plan to eliminate or reduce imbalance with respect to race, color, religion or national origin, if the plan has been filed with the Commission under regulations of the Commission and the Commission has not disapproved the plan.

The Indiana Civil Rights Commission recommended enactment of a statute that would legalize plans to prevent de facto segregation.

The Indiana Real Estate Association initially opposed the Amendment, apparently because many realtors in small communities felt that they would have to sell to Negroes and partly out of a habit of opposing any legislation in this area. Once it was understood that no one would have to sell to Negroes, this opposition was overcome.

The Negro Real Estate Association felt that the state should enact a much stronger fair housing law, without exemptions and with provisions for vigorous enforcement.

By one vote, the Indiana Convention of the State National Association for the Advancement of Colored People opposed the Amendment.

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1. Uniform Law Commissions Model Act, Discrimination Act § 608 (1966).

They said it was too close to a quota system, and they feared that it could be misused by an unsympathetic administration.

In March of 1967, the Governor signed the 1967 Amendment to the Civil Rights Act. That part of the 1967 Amendment dealing with de facto segregation in housing provides: that no cease and desist order shall issue against

> . . . Any person who has engaged in a discriminatory practice pursuant to a voluntary plan adopted to prevent or eliminate de facto segregation if such plan establishes no fixed numbers or percent for any race, religion or nationality and is found by the Commission to be reasonably designed to prevent de facto segregation and consistently followed by persons privy to the plan.[2]

The regulations to be immediately issued under this statute require only that the plan be filed with the Commission and thus become a public record. The plans thus filed will be neither approved nor disapproved by the Commission.

Indiana's failure to enact the provision of the Model Act which would give the Commission authority to disapprove a plan in advance is an apparent source of future difficulty. For example, with such authority to approve or disapprove, such questions as the permissible geographic area to be included in a plan would be settled in advance, and the reasonableness of the plan as an instrument for preventing de facto desegregation would be tested at the Commission level prior to attack in court.

Although Indiana's statute specifically outlaws a plan that fixes a quota for any race, religion or nationality, it is difficult to imagine a workable plan that is not based upon a numbers concept. If a plan provides that one-half of the occupants of the area should be of a given race, religion or nationality, it would be invalid as a quota;

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2. Indiana Acts, ch. 276, § 3(*l*) (1967). The Commission shall have the power and duty . .

> To state its findings of facts after a hearing and, if the Commission finds a person has engaged in an unlawful discriminatory practice, it may cause to be served on such a person an order requiring such person to cease and desist from such unlawful discriminatory practices and requiring such person to take further affirmative action as will effectuate the purposes of this act. Provided, however, that no cease and desist orders shall be issued against an owner-occupant with respect to a residential building containing less than four housing units, nor against any person who has engaged in a discriminatory practice pursuant to a voluntary plan adopted to prevent or eliminate de facto segregation if such plan establishes no fixed numbers or percent for any race, religion or nationality and is found by the Commission to be reasonably designed to prevent de facto segregation and consistently followed by persons privy to the plan.

and if it provides that every other house would be available for sale to the previously excluded group, it would appear that this would be just another way of saying the same thing. Without a fixed goal such as a quota, a party to the plan will not know whether it is consistently followed by others.

The absence of a quota in a plan does not necessarily give it more protection from constitutional attack. To the extent that one is precluded from buying a house in an area because of race, etc., his injury would appear to be the same regardless of whether he offers to buy after the area has reached the planned quota or after the area has absorbed what the participants in the plan consider to be a reasonable number of people of the race, religion, or nationality identical to that of the would-be buyer.

A possible benefit from the 1967 Amendment is that areas previously closed to racial, religious, and nationality minorities will become open if the inhabitants of such areas take the initiative and adopt their plans before there is any penetration of the area by those previously excluded. Probably such areas will not seek to come under the Amendment until after its constitutionality has been clearly established, because, if the plan is not valid or if the statute is not constitutional, a participant would be admitting that he was practicing discrimination subjecting himself to the issuance of a cease and desist order. Evasionary devices, such as taking the house off the market, telling the purchaser that there is an offer on the house, or refusing to show it for any number of reasons, do not so clearly show discrimination against the purchaser as a plan sanctioned under the 1967 Amendment.

To make the 1967 Civil Rights Amendment effective, it appears that the Civil Rights Commission must become more involved with a plan prior to the stage at which it is challenged. There should be some definition of the area which a plan can legitimately encompass and guidelines to help the Commission determine whether a plan is reasonably designed to prevent or eliminate de facto segregation. More is required in the way of regulations than merely a filing requirement.