

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the matter of the Appeal of

PIKE PLACE MARKET MERCHANTS
ASSOCIATION

FILE NO. M-89-004

from a decision by the Market
Historical Commission

Introduction

The matter is before the Hearing Examiner of the City of Seattle by way of an appeal by the Pike Place Market Merchants Association from a decision of the Pike Place Market Historical Commission dated March 8, 1989 and/or from a certificate of approval of said Commission dated August 9, 1989.

In advance of the hearing on October 19, 1989, the parties stipulated to facts.

At the hearing the appellant, Pike Place Market Merchants Association, was represented by its Director, Paul Dunn. The applicant/appellee, Colleen Dyke was represented by Paul M. Silver, attorney at law. The Pike Place Market Historical Commission appeared by and through J. Dee Frankfourth.

The appellant exercised the right to appeal pursuant to Chapter 25.24, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on October 19, 1989.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The following findings of fact have been stipulated to by the parties and are set forth in full as the findings of the Hearing Examiner:

- a. In the fall of 1988, Colleen Dyke applied to the Pike Place Market Historical Commission for permission to acquire Collectors Bookstore from Rita Dyke.
- b. Rita Dyke (who is Colleen Dyke's mother-in-law), owned "Collectors Bookstore," a Pike Place Market bookstore, for approximately 19 years.
- c. Rita Dyke is now in her seventies and in poor health.
- d. Colleen Dyke's husband, Rod Dyke, has owned a separate Pike Place Market Business, "Golden Age Collectables," for approximately 19 years.
- e. In 1982, Colleen Dyke (formerly Colleen Clark) married Rod Dyke.
- f. Between 1974 and 1982, Colleen Dyke was active in the Pike Place Market. Among other things, she operated a "day table" as an agent for a craftsman, was a craftsman herself, helped found and

manage two Pike Place Market businesses:

"Elliot Bay Trading Company" and "Pike Place Botanical;" and between 1979 and 1981, she was employed by the Pike Place Merchants Association as its information officer and as its volunteer coordinator.

- g. After her marriage to Rod Dyke in 1982, Colleen assisted Rod in the operation of his business, Golden Age Collectables, and assisted Rita Dyke in the operation of her business, Collectors Bookstore.
- h. Colleen Dyke has a long-term interest in books. She has been a serious collector of illustrated children's books for some years and is an avid reader of science fiction.
- i. On December 14, 1988, the Commission denied Colleen Dyke's application on the grounds that her husband, Rod Dyke, already owned a business in the Pike Place Market. The Commission relied upon its guideline IC6 which provides that the Commission shall not approve the ownership of more than one business by the same "proprietary interest."
- j. Colleen Dyke appealed from this decision and, additionally, asked the Commission to reconsider its decision.
- k. On January 25, 1989, the Commission agreed to reconsider its decision.
- l. On February 3, 1989, Colleen Dyke submitted a letter to the Commission offering to comply with certain stated conditions intended to establish that Collectors Bookstore would be owned and managed as a separate business from Rod Dyke's business, Golden Age Collectables.
- m. On March 8, 1989, the Commission voted to approve Colleen Dyke's application, subject to her compliance with the conditions proposed in her February 3 letter.
- n. Colleen Dyke did not argue to the Commission and did not present evidence to the Commission to the effect that she had acquired the subject bookstore from Rita Dyke prior to her application to the Commission for approval; nor did she argue to the Commission or present evidence to the Commission to the effect that she had invested money in leasehold improvements or other improvements in the expectation that the Commission would grant her approval.
- o. On August 7, 1989, the Seattle City Attorney's office certified to the Commission that Colleen Dyke had fully complied with all of the conditions imposed by the Commission at its March 8 meeting.
- p. On August 9, 1989, the Commission issued its Certificate of Approval with respect to Colleen Dyke's application to acquire Collectors Bookstore.

2. The following findings were not agreed to by parties and are made by the Hearing Examiner on the basis of the evidence elicited at the hearing:

- a. Some of the merchants in the Pike Place Market believe that spouses may not each own business entities within the Market due to Commission Rule 1C6 and Washington's community property laws, RCW 26.16. There is no evidence as to whether these same merchants attempted to use or considered using a separate property agreement so as to defeat the claim of community interest by a spouse.
- b. The acquisition of Rita Dyke's business by Colleen Dyke was not by gift or devise or operation of law.

Conclusions

1. This matter is properly before the Hearing Examiner of the City of Seattle pursuant to Section 1.26(a) of the Hearing Examiner Appeal Rules and Seattle Municipal Code Section 25.24.080. The burden of proof is upon the appellant to prove that the decision of the Commission is wrong. The Commission decision is entitled to substantial weight. Thus, the Hearing Examiner does not review facts in this matter de novo.

2. In Washington State a marital community owns all property acquired during a marriage with the exception of property acquired by a spouse by gift or devise. RCW 26.16.010, .020 and .030. Parties to a marriage may gift their community interest in property to the other spouse. RCW 26.16.010 and .020.

3. The possessor of separate property may manage, lease, sell, convey, encumber or devise by will such property to the same extent "that his or her spouse can with respect to separate property belonging to the other spouse." RCW 26.16.010 and .020. For purposes of Washington law, then, the separate property of one spouse is juristically separate and apart from the community and the separate estate of the other spouse.

4. The conditions of the Commission essentially required the appellee, Colleen Dyke, to acquire her interest in the subject bookstore as her separate property and further required her husband to disclaim any community or other legal interest in and to said property. This was accomplished by written agreements and conveyances satisfactory in form to the Law Department of the City of Seattle.

5. The Pike Place Market Historical Commission Guideline 16C prohibits a single "proprietary interest" from owning more than one business entity within the Pike Place Market. Colleen Dyke's property was a "proprietary interest" separate and apart from the proprietary interest represented by her husband and/or their community. That Ms. Dyke may choose to convey her interest in and to the subject property by will to her husband is of no moment as any person owning any property may convey it to any person of his or her choosing. To restrict ownership of property within a public facility based upon a speculative possibility of a conveyance to a spouse upon death likely violates the Equal Rights Amendment to the state constitution and would likely constitute marital status discrimination as that term is used in RCW 49.60. Action by the Commission pursuant to its rules so as to prohibit the transaction undertaken by Ms. Dyke may also amount to State action creating a liability under 42 USC Sec. 1983 because of its derision of a property right otherwise guaranteed by State law.

6. The Hearing Examiner on appellee's motion previously dismissed appellant's first ground for appeal. That ruling stands and is made a part of this decision. That part of the

appeal claimed that the action of the Commission was a mere "ratification" not an approval of appellee's request. The Hearing Examiner appeal rules would be severely strained, however, if appellants could appeal hypothetical as opposed to actual decisions. Besides, stipulated Finding 1.m. negates this ground of appeal.

Decision

The decision(s) of the Commission are affirmed, appellant's first ground of appeal having been earlier dismissed.

Entered this 21 day of November, 1989.


Kelby Fletcher
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such a request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.