

December 2019

## Civil Rights in Wyoming

Betty Oeland

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

---

### Recommended Citation

Betty Oeland, *Civil Rights in Wyoming*, 13 Wyo. L.J. 76 (1958)  
Available at: <https://scholarship.law.uwyo.edu/wlj/vol13/iss1/8>

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

citizen to determine whether the officer is acting unlawfully. Thus the "assist at your own peril" rule seems unjust and therefore undesirable. Citizens should be encouraged to co-operate in law enforcement rather than be penalized for doing so. It is a strange legal anomaly to punish a citizen for obeying the command of an officer, vested with lawful authority to command, and at the same time subject him to punishment if he refuses or neglects to obey.<sup>25</sup>

JOHN P. MAGNUSON

---

### CIVIL RIGHTS IN WYOMING

Recent United States Supreme Court decisions demonstrate that the Court is showing heightened interest in the civil rights area. This is true particularly in connection with the Negro race, although not restricted to that race.

The much publicized 1954 decision in *Brown v. Board of Education of Topeka*<sup>1</sup> dealt with the admission of Negro children to a white school in Topeka, Kansas. Three other cases, from South Carolina, Virginia and Delaware, were consolidated with the *Brown* case for hearing by the Supreme Court. In each case Negro children were denied admission to white schools under laws requiring<sup>2</sup> or permitting<sup>3</sup> school districts to establish separate schools for Negroes. In each of the cases, except the Delaware decision, the federal district courts had denied relief to the parents of the Negro children under the "separate but equal" doctrine announced by the United States Supreme Court in *Plessy v. Ferguson*,<sup>4</sup> which held that equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. The Supreme Court of Delaware upheld that doctrine but ordered that the children be admitted because of inequality of the schools.<sup>5</sup>

The *Plessy* case involved not education, but transportation, and the *Brown* case was the first one that presented the question of whether the doctrine should be applied to education. In denying the applicability of the "separate but equal" doctrine, the Court stated:

In the field of public education, the doctrine of "separate but equal has not place. Separate educational facilities are inherently unequal.<sup>6</sup>

The Court reached this conclusion through a discussion of the develop-

---

25. *Supra* note 21.

1. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

2. South Carolina, Virginia, and Delaware.

3. Kansas.

4. 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

5. *Supra* note 1.

6. *Supra* note 1 at 347 U.S. 495.

ment of our educational processes since the adoption of the Fourteenth Amendment to the United States Constitution with special reference to the educational opportunities afforded Negro children and to the effect of segregation on public education:

To separate them [Negro children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.<sup>7</sup>

Thus the *Brown* case held that Negro children denied admission to white schools solely on the basis of race and color are deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. The Court found it unnecessary to discuss the effect of segregation in connection with the due process clause of the Fourteenth Amendment, but in a decision handed down the same day as the *Brown* case, it was held that segregation also violated due process in that it constitutes an arbitrary deprivation of liberty.<sup>8</sup>

Other Supreme Court cases such as *Pennsylvania v. Board of Directors of City Trusts of Philadelphia*<sup>9</sup> and *Henderson v. United States*<sup>10</sup> have followed the reasoning and philosophy of the *Brown* case. The *Pennsylvania* case was also a school segregation issue but the *Henderson* case involved segregation in connection with transportation. The Court held that segregation in a railroad dining car under railroad regulations is in violation of a section of the Interstate Commerce Act<sup>11</sup>, which section makes it unlawful for a railroad engaged in interstate commerce to subject any particular person to any undue or unreasonable prejudice or disadvantage.<sup>12</sup>

Civil rights has recently become significant in Wyoming too, with the passage of the 1957 Civil Rights Act. Previous to this legislation, Wyoming had two statutes which dealt with racial segregation. Wyoming Compiled Statutes, 1045, Section 50-108 provides:

All marriages of white persons with Negroes, Mulattoes, Mongolians, or Malays hereafter contracted in the state of Wyoming are and shall be illegal and void.

A bill was introduced by Senator Normal Barlow in the 1957 Wyoming legislative session which would have repealed Section 50-108. The bill was read three times, then referred to committee and returned without recommendation and placed on the general file, from which it never emerged.<sup>13</sup> Thus the Wyoming miscegenation statute is still in effect.

Wyoming Compiled Statutes, 1945, Section 67-624 provided:

- 
7. *Supra* note 1 at 347 U.S. 494.
  8. *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).
  9. 353 U.S. 230, 77 S.Ct. 806, \_\_\_\_\_ L.Ed. \_\_\_\_\_ (1957).
  10. 339 U.S. 816, 70 S.Ct. 843, 94 L.Ed. 1302 (1950).
  11. Act of February 4, 1887, c. 104, § 3, 24 Stat. 380, as amended 49 U.S.C. § 3 (1952 ed.).
  12. *Ibid.*
  13. Digest of Senate and House Journals of the Thirty-fourth State Legislature of Wyoming, 74 (1957).

When there are fifteen (15) or more colored children within any school district, the board of directors thereof, with the approval of the county superintendent of schools, may provide a separate school for the instruction of such colored children.

This statute is very similar to other state statutes permitting segregated schools. It would, of course, have been declared unconstitutional following the *Brown* case. The Wyoming Legislature, however, has repealed the statute.<sup>14</sup> Even while the statute was in force, no segregated schools existed in the state of Wyoming, although some schools are attended predominantly by colored children simply because the school is located in that section of the municipality in which they live.<sup>15</sup>

The prohibitions of the Fourteenth Amendment against deprivation of life, liberty or property without due process of law or denial of equal protection of the laws, apply only to state action and the invasion of the rights of one person by another who acts as a private individual does not come within its reach.<sup>16</sup> Many states, because of this concept, have enacted civil rights legislation which relates to individual action.

The 1957 Civil Rights Act in Wyoming was originally introduced in the Senate<sup>17</sup> and entitled: "An Act to Provide for the Equal Treatment of all Persons in the State of Wyoming." It provided that:

No person of good deportment shall be refused the services or sales of the necessities of travel and of life by any public establishment in this state because of race, creed, color or national origin.

Violations of the act were to be adjudged and punished as misdemeanors, and it was made the duty of every county and prosecuting attorney to file complaints when he had knowledge or sworn information of a violation of the act. The bill was introduced, read and referred to the Senate Judiciary Committee, which committee recommended an amendment<sup>18</sup> and Do Pass. It was next considered in the Committee of the Whole, the amendment was adopted, but the bill as amended was defeated by a voice vote. The bill was then indefinitely postponed.<sup>19</sup>

Subsequent to the postponement of civil rights legislation by the Senate, the Wyoming House of Representatives considered a similar bill.<sup>20</sup> This bill was almost identical to the Senate bill except that it deleted the words "and travel" and the section making it a duty for enforcement officials to file complaints. The bill was introduced, read

14. S.L. of Wyo., c. 36 (1955).

15. Statement by Miss Velma Linford, State Superintendent of Public Instruction, on November 27, 1957.

16. *Powell v. Utz*, 87 F.Supp. 811, 812 (E.D.Wash. 1949).

17. Senate File No. 7 (1957).

18. The amendment proposed to delete the section imposing a duty on enforcement officials to file complaints when they had knowledge or sworn complaints of violations of the act.

19. *Digest of Senate and House Journals of the Thirty-fourth State Legislature of Wyoming*, 16 (1957).

20. House Bill No. 143 (1957).

and referred to the House Judiciary Committee. The Committee recommended a Do Pass, it was considered in the Committee of the Whole, given a Do Pass, read the second and third times and passed. It was then sent to the Senate.<sup>21</sup>

The Senate then reconsidered the civil rights legislation<sup>22</sup> in a bill which was substantially different from the previous two bills. It provided that:

It shall be unlawful to segregate any person or persons or discriminate against a person or persons solely because of their race or creed or color or national origin. Any person acting contrary hereto shall be liable for actual damages to persons and property directly resulting therefrom.

This bill was considered and passed and sent to the House where it was considerably amended and returned to the Senate. The Senate then passed the act; it was signed by the President and Speaker and approved by the Governor on February 20, 1957.<sup>23</sup>

The bill, as finally enacted, provides:

No person of good deportment shall be denied the right of life, liberty, pursuit of happiness, or the necessities of life because of race, color, creed, or national origin.<sup>24</sup>

The act then goes on to provide, in Section 2, that violations by any person, firm or corporation shall be deemed misdemeanors and the penalty is fixed at a fine of not more than \$100.00 or a jail term not to exceed six months, or both.

Several problems of statutory interpretation are suggested by a reading of this statute:

- (1) What is meant by a "person of good deportment"?
- (2) What is included in the right of "liberty" so far as the enjoyment of civil rights is concerned?
- (3) What is included in the clause "pursuit of happiness"?
- (4) What are "the necessities of life" within the meaning of the statute?

Before attempting to ascertain the meaning of the phrases just mentioned, it may be helpful to make a general comparison between the Wyoming Civil Rights Act and similar statutes which have been enacted by other states.

The section of the New York Civil Rights Law comparable to the Wyoming act is much more specific than the Wyoming legislation, and differently constructed. In part, it provides:

---

21. *Supra* note 20 at 154.

22. Senate File No. 161 (1957).

23. *Supra* note 20 at 74.

24. Wyo. Comp. Stat. §§ 9-836, 9-837 (Supp. 1957).

All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. . . .<sup>25</sup>

The New York Act is restricted in terms to owners, etc., of *public accommodations*. The Wyoming statute makes quite a different approach, not restricting its coverage to particular kinds of accommodations or services, but specifying certain broad types of rights which are not to be denied to anyone (of good deportment) by any body because of race, color, creed or national origin.

The New York statute was declared constitutional in *People v. King*<sup>26</sup> and further construed in *Camp-Of-The-Pines v. New York Times Co.*<sup>27</sup>

The Illinois Civil Rights Law provides:

All persons within the jurisdiction of said state of Illinois shall be entitled to the full and equal enjoyment and privileges of inns, restaurants, eating houses, motels . . . taverns . . . cafes . . . and all other places of public accommodations and amusement, subject only to the conditions and limitations established by laws and applicable alike to all citizens. . . .<sup>28</sup>

The Illinois statute, then, is very similar to that of New York. It specifies certain places in which the facilities, privileges, etc., shall be equal, and also adds the general phrase "and all other places of public accommodations and amusement." The New York act and the Illinois act both differ from that of Wyoming by omitting the race, color, creed or national origin phrase and simply providing that "all persons . . . shall be entitled to the full and equal enjoyment" of the facilities described.

In *Fletcher v. Coney Island, Inc.*,<sup>29</sup> the Court of Appeals of Ohio upheld the constitutionality of the Ohio Civil Rights Act, which is quite similar to that of New York and Illinois.

The Montana statute, enacted in 1955, provides:

No person, partnership, corporation, association or organization owning or managing any place of public accommodation or amusement shall discriminate against any person or group of persons solely on the grounds of race, color or creed.<sup>30</sup>

This statute differs from the Wyoming statute in that Wyoming's "of good deportment" qualification is omitted; and it is limited to places of public accommodation and amusement.

Colorado Revised Statutes, Section 25-1-1 provides:

- 
25. N.Y. Civil Rights Law § 40 (1948).
  26. 110 N.Y. 418, 18 N.E. 245 (1888).
  27. 184 Misc. 389, 53 N.Y.S.2d 344 (1955).
  28. Ill. Rev. Stat. § 38-125 (1955).
  29. 165 Ohio St. 150, 136 N.E.2d 344 (1955).
  30. S.L. of Mont., c. 240 (1955).

All persons within the jurisdiction of the state shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, eating houses, barber shops, public conveyances on land or water, theatres, and all other places of public accommodation and amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens.

This statute, also, is much more specific than the Wyoming statute. "All persons" are protected; the general phrase "and all other places of public accommodation and amusement" is included which operates to bring within the statute those facilities not specifically listed.

Other state statutes involving civil rights then are much more specific than in the Wyoming statute. Our statute provides that persons shall not be denied the "necessities of life"; other statutes list specific accommodations that are not to be segregated. Our statute uses the words "of good deportment" and does not define those words; other statutes employ the phrase "no person" without the qualifying adjectives.

We will next inquire into the meaning which courts have ascribed to the key phrases used in the Wyoming statute.

(1) The meaning of "person of good deportment."

The courts have spoken of "good behavior" rather than "good deportment." However, *behavior* has been defined as follows:

The act or manner of behaving, either absolutely or in relation to others; mode of conducting oneself; conduct; *deportment*; manners, carriage . . . *correct deportment*.<sup>31</sup> (emphasis supplied)

Thus behavior and deportment may be said to be synonyms. Courts generally have held that good behavior is conduct authorized by law.<sup>32</sup> It has been defined in terms of propriety, morals, and the requirements of law.<sup>33</sup> Good behavior means obedience to and conformity with criminal laws of states, the demeanor of law-abiding citizens.<sup>34</sup>

A person, to come within the meaning of the phrase "of good deportment" as used in our statute, would have to be conducting himself according to our laws with the demeanor of a law-abiding citizen.

(2) What is included in the right of "liberty" so far as the enjoyment of civil rights is concerned?

The word "liberty" as employed in the United States Constitution and generally understood in the United States, is a term of comprehensive scope.<sup>35</sup> It includes, not only freedom from restraint, but the right of man to use and enjoy all of his faculties. An implied restraint on "liberty" is regulation by law. "It [liberty] is only freedom from restraint under

31. Webster's New International Dictionary (2d ed. 1956).

32. United States v. Hrasky, 240 Ill. 560, 88 N.E. 1031, 1033 (1909).

33. Ibid.

34. State v. Millner, 240 N.C. 602, 83 S.E.2d 546, 547 (1954).

35. Block v. Schwartz, 27 Utah 387, 76 Pac. 22 (1904).

conditions essential to equal enjoyment of the same right by others."<sup>36</sup> The application of the word "liberty" to our Civil Rights statute, then, would mean that no person may be denied freedom from restraint because of race, color, creed, or national origin; and also that he shall not be denied the right to use and enjoy all of his faculties as regulated by law. The difficulty of application in a specific instance is obvious.

(3) What is included in the clause "pursuit of happiness"?

This expression is one of a general nature and the right is not capable of specific definition or limitation.<sup>37</sup> This guarantee, though one of the most indefinite, is also one of the most comprehensive. It includes the right to use all mental and physical powers to attain happiness except in so far as may be necessary to secure the equal rights of others.<sup>38</sup> Thus, under Wyoming's civil rights statute, a person may not be denied, on the basis of race, color, creed, or national origin, the right to use all of his mental and physical powers to attain happiness, providing the exercise of this right does not interfere with the equal rights of others.

(4) What are "the necessities of life" within the meaning of the statute?

The phrase "necessities of life" is difficult to define in connection with the civil rights situation. These words have been defined and construed many times, but in connection with divorce and alimony and contracts made by infants. The term is generally thought to be broad and elastic.

The term "necessity of life" when used without other definition . . . is without any certainty or meaning, but varies according to the financial or social status of the individual, as well as according to time and place.<sup>39</sup>

Food, clothing and shelter are usually classified as "necessary per se."<sup>40</sup> In *State v. Earnest*<sup>41</sup> the court held that in construing the term "necessities of life," it was not enough to show that the article was classified as necessary per se but it also must be shown that the article was actually needed at the time. Thus, a person claiming that he was denied a necessity of life because of his race, his color, his creed, or his natural origin would have to prove that the article was actually needed at the time, and in an action brought under the Wyoming Civil Rights statute, the court would be forced to determine whether the article was needed "according to the financial or social status of the individual."

A plaintiff bringing an action under our civil rights statute would have to prove that he was conducting himself with the demeanor of a law-

36. *Crowley v. Christensen*, 137 U.S. 86, 89, 11. S.Ct. 13, 34 L.Ed. 620 (1890).

37. *Black's Const. Law*, § 145 (3d ed. 1924).

38. *Ibid.*

39. *State v. Goldstein*, 18 Ala.App. 587, 93 So. 308, 311 (1922). Response of Supreme Court of Alabama to certified question.

40. *State v. Earnest*, 162 S.W.2d 338, 341 (Mo. 1942).

41. *Ibid.*



abiding citizen and that he was denied his life, his liberty, through restraint, or denied the right to the use and enjoyment of all his faculties; his right to pursue happiness, providing that the exercise of that right did not interfere with the equal rights of others; or that he was denied an article actually needed according to his financial and social status; all of these deprivations resulting because of his race, his color, his creed, or his national origin. The court would seemingly have a difficult task determining the issue because of the broad and general terms used in the statute.

It seems evident that the 1957 Wyoming Civil Rights Act is a piece of compromise legislation, demonstrated by its arduous legislative history and the lack of specificity in the final enactment. Removing from consideration the definite possibility that the statute may be "void for vagueness,"<sup>42</sup> the most that can be said is that the language of the statute is so broad and general, and will require so much in the way of judicial interpretation, that it will not prove to be an effective instrument for the attainment and preservation of "civil rights."

BETTY OELAND

---

## PROTECTION FOR THE AUTOMOBILE INSTALLMENT BUYER

In the United States in 1956 the new passenger car registrations totaled 5,955,248. In Wyoming during the same period new car registration totaled 26,506.<sup>1</sup> Used car purchases in the United States amounted to 8,900,000 during 1956.<sup>2</sup> Of all the new and used automobiles purchased in 1956, 36% of the purchases were made for cash, 62% were financed by installment credit or other borrowing, and 2% were financed by methods that were not ascertained.<sup>3</sup> It can easily be seen from these figures that installment sales in the automobile field are of primary importance.

The significant rise in installment financing has led nine states and the territory of Hawaii to enact legislation controlling the entire field of installment credit.<sup>4</sup> Thirteen states have passed legislation controlling the installment financing of automobiles.<sup>5</sup> A declaration by one investigating

---

42. 2 Sutherland, *Statutory Construction* § 4920 (3d ed. 1943).

1. *Automobile Facts and Figures*, Automobile Manufacturers Association, 17 (37th ed. 1957).
2. *Id.* at 31.
3. *Ibid.* It is interesting to note that the amount of installment credit has increased 10% since 1950.
4. Conn. Gen. Stat. c. 311, § 2163c to 68c (Supp. 1953); Idaho Laws, c. 153 (1957); Ind. Stat. Ann. § 58-901 to 58-934 (1951); Md. Ann. Code Art. 83, § 116 to 152 (1951); Mass. Laws Ann. c. 255, § 11 to 13h (1956); N.J. Rev. Stat. § 17:16B-1 to 12 (Supp. 1950); N.D. Laws c. 322 (1957); Ohio Rev. Code § 1317.01 to .99 (1953); Utah Code Ann. § 15-1-2a (Supp. 1957); Hawaii Laws Art. 98, § 1 to 30 (1941).
5. Cal. Civil Code § 2981 to 82 (1949); Colo. Rev. Stat. § 13-16-1 to 10 (1953); Iowa Acts c. 322 (1957); Ky. Rev. Stat. § 190-010 to 190-990 (1956); Me. Rev. Stat. c. 60, § 305 to 6 (1954); Mich. Laws c. 266 (1957); Nev. Stat. c. 346 (1953); N.Y. Sess. Law c. 633 (1956); Ore. Rev. Stat. § 727.010 to 727.990 (1953); Pa. Stat. Ann. Tit. 69, § 601 to 37 (Supp. 1951); Va. Code § 46-502 to 504 (1950); Wis. Stat. § 218.01 to 105 (1951).