DEC 5 1967

Solicitor General

December 4, 1967
JD:BKL:jw

John Doar
Assistant Attorney General
Civil Rights Division

Miller v. Amusement Enterprises, Inc.
(Fifth Circuit) No. 24259

I recommend that the Department of Justice accept the invitation of the court of appeals to participate in the en banc rehearing of this case as amicus curiae.

This is a suit brought under Title II of the Civil Rights Act of 1964 seeking an injunction against racial discrimination against Negroes by operators of the Fun Fair Amusement Park in Baton Rouge, Louisiana. The district court held that the amusement park was not covered by Title II and the plaintiffs appealed. The court, in an order dated June 13, 1967, ordered the United States to file a brief setting forth the legislative history of 43 U S.C. 2000a(b)(3) and (c)(3) to the extent that that history might be pertinent to the issues involved in the appeal. The Civil Rights Division accordingly furnished the court with a summary of the legislative history and told the court that the legislative history was inconclusive with respect to the issues before the court. On September 6, 1967 a panel of the court of appeals consisting of Judges Rives, Dyer and District Judge Johnson held that amusement parks were not covered by Title II; Judge Johnson dissented. On September 27, 1967, the appellants petitioned for a rehearing en banc. At that point we reevaluated the case and, with the concurrence of Mr. Spritzer, determined to file a memorandum urging that the court vacate its judgment and the judgment of the court below and remand the cause to the district court for a determination of whether Fun Fair Park is an establishment covered by Title II by virtue of the fact that it contains within its premises an establishment offering food for consumption on the premises (42 U S.C 2000a(b)(2) and (4)). The reason for taking this position was

cc: Records
Chrono
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Dunbaugh
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Appeal file

that the parties had purported to stipulate that question out of the case, thus attempting to frame the issue solely in terms of coverage under 42 U.S.C. 2000a(b)(3). On October 25, 1967, the court of appeals granted the petition of the appellants for a rehearing en banc, and on November 9, 1967, the clerk of the court wrote the Attorney General and stated:

> I am authorized by this Court to advise that since so much of this Court's opinion was built upon the legislative history furnished to the Court at the Court's request by the United States Attorney General, that the Government should be invited to appear and argue the case amicus curiae. Accordingly, I am herewith notifying you of the Court's wishes in this respect.

The clerk subsequently informed us that the court, by its invitation, contemplated our filing a brief.

We believe that, in light of the Court's invitation, the Department should participate in the rehearing en banc. We would propose to file with the Court a more extensive brief supporting the position we took in our memorandum on the petition for rehearing. We would also propose to make ourselves available to the court for any questions as to the legislative history of Title II. If the Court reaches the matter on the merits we would propose to argue that, on balance, the statute covers amusement parks. In essence, we would support Judge Johnson's reasoning.

This case is set for argument on January 10 or 11, 1968. The clerk wishes us to make a prompt commitment, so that he can establish a briefing schedule.