

Attorneys gird for housing trial

By ALICE COLLINS

A U.S. attorney predicted Friday that the federal government's housing discrimination lawsuit against the city of Birmingham will go to trial in Detroit next spring.

Legal teams on both sides have stepped up pre-trial preparations, including the questioning under oath (taking depositions) of some persons whose testimony is expected to play a major role in that trial.

According to U.S. Attorney Michael Sussman, Federal District Judge Robert DeMasco has given the Department of Justice and the city a late January deadline for wrapping up the pre-trial interviews.

"So it's my assumption," said Sussman, "that we will proceed and the city will proceed and the trial will probably start in the spring of 1981."

Jane Garrow, an attorney on Birmingham's legal team, said the city is "contemplating taking some depositions, but no notices of that have gone out yet."

The Justice Department filed the lawsuit against Birmingham in March charging that the city discriminated racially in blocking development of senior citizen and low-income housing in 1978.

Birmingham, in an answer filed in April, denied the charges.

FORMER BIRMINGHAM Commissioner Robert Kelly confirmed that the government took nearly 10 hours of sworn written testimony from him during three sessions in recent weeks.

Kelly said he was asked "right down the line everything I remember from the purchase of the Baldwin property (proposed site for senior housing) in the early '70s on up to when the suit was filed this year."

"They were most thorough," continued Kelly, a member of the commission throughout the city's controversial and unsuccessful struggle for a housing project. Kelly was defeated for re-election last April.

Government attorneys also sought and took sworn written statements from Mayor Gary Kain, Commissioners William York and Bert Jackson, and former City grants administrator Leonard Watkowski.

The depositions were taken in the Bloomfield Hills offices of Beier, Howlett, McConnell, Gogossian & McCann, the law firm directing Birmingham's defense.

Representing the city during the hours of testimony were Attorney Dean Beier and William Saxton, retained by Birmingham as a special defense attorney for the case.

YORK, KAIN and Jackson responded to government questions about the 1978 city elections in which voters defeated plans for proposed senior housing and elected the three to the commission. Kain, York and Jackson ran on a platform opposing the planned housing projects.

York said Friday he was shocked by the way his deposition questioning was carried out by the government attorney.

"It troubled me a great deal," he said when asked to give his impressions of the deposition procedure for this article.

"They attempted to trick a citizen (himself) into responding to their questions in the way they preconceived them," said York.

"A few questions they asked me five or six times. And each time they'd slip one little new word into it that changed the meaning of my answer."

"At first I didn't even notice it, but

Saxton (representing the city) objected for the record each time.

"I couldn't believe someone representing the federal government would resort to trickery. If you can't trust them, who in the hell can you trust?"

Asked Friday about York's charges, government attorney Sussman said, "No comment. We don't respond to comments like that."

BOTH KELLY and York said the questioning government lawyers had volumes of newspaper articles and campaign materials involving the proposed housing project and elections. "They had every newspaper article ever written about it, nicely mounted," said York. "They based questions on these articles which are total hearsay."

York said he was asked about a much-publicized comment he made at a pre-election League of Women Voters candidate night in 1978. He was quoted as saying, "It is biologically wrong to create neighborhoods with a mix of persons of widely diverse social and economic standing."

"I remember saying it," said York Friday, "but it was a slip of the tongue."

York continued, "At the time, I was responding to someone's question and the whole subject was the socio-economic impact. I was quoting from a book referring to a study by some scientists."

"It was like art people tend to want to be with art people and scientists tend to want to be with scientists."

"I guess I really didn't realize I'd said it until everybody laughed," added York.

SAID KELLY, the only commissioner not voted out of office during the 1978 housing storm: "I don't know that I was such a good witness for the government (on the deposition)."

"I'm totally comfortable with everything I've said and done in the past. I'm only sorry things didn't come out the way I wanted them, with senior housing on that land."

Kelly added that he objected greatly to the number of dollars being spent as a result of the government bringing the suit. "To spend all the time and money on something like this sure tries one's patience."

IN A RELATED matter, the City Commission was told last week that the Birmingham housing case might inspire an amendment to the U.S. Fair Housing Act of 1968, an act the Justice Department accuses Birmingham of violating.

In a letter to the commission, Attorney Beier reported that U.S. Sen. Orrin Hatch, R-Utah, has proposed amending that law to "require proof of intentional discrimination (in housing), rather than 'result' discrimination." Beier wrote, "that this amendment was in part inspired by the pending litigation against Birmingham."

"Senator Hatch's office sought suggestions from Mr. Saxton several weeks ago. Mr. Saxton called to the attention of Senator Hatch's office the fact that at least some federal courts were allowing relief to municipalities where no actual intent to discriminate was proven."

After additional discussions with Saxton, Hatch's office informed Saxton that the senator was considering sponsoring the amendment, according to Beier.

Saxton is considered a specialist in lawsuits dealing with the federal government and discrimination issues. He represented 52 suburban school districts in the Detroit school bus case in the early '70s.

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