

On the other hand, the Supreme Court has held that the concept of state action does not extend to a private club solely by virtue of state licensing and regulation of the sale of liquor in the club. 1/ And when confronted with the argument that discrimination by private housing sub-developers constituted state action, the Court resolved the case before it on statutory grounds. 2/

For these reasons, it is impossible to predict the extent to which the due process and equal protection clauses will apply to the corporation's actions. But it is probably fair to conclude that the more extreme the action complained of, the more likely it is to be entertained by the courts.

One noted scholar has written: 3/

I find in the decisions . . . in the area of 'eleemosynary' institutions such as schools, colleges, libraries, and hospitals . . . that if private action has resulted in a general and serious denial of values the [Fourteenth] Amendment was meant to protect, an answer that the state has merely failed to prevent this will not suffice.

It has already been suggested, for example, that efforts to deny the vote to citizens of new communities or to base their voting rights on property ownership may violate the equal protection clause. 4/

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1/ Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972).

2/ Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

3/ H. Friendly, The Dartmouth College Case and the Public-Private Penumbra 18 (undated).

4/ Note, Democracy in the New Towns: the Limits of Private Government, 36 U. Chic. L. Rev. 378 (1969).