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[Maliks Muwatta] Fara'id

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Maliks Muwatta.
Book : 27. Fara'id.

027 : 000A : Section 337

Yahya related to me from Malik, "The generally agreed upon way of doing things among us and what I have seen the people of knowledge doing in our city about the fixed shares of inheritance of children from the mother or father when one or other of them dies is that if they leave male and female children, the male takes the portion of two females. If there are only females, and there are more than two, they get two thirds of what is left between them. If there is only one, she gets a half. If someone shares with the children, who has a fixed share and there are males among them, the reckoner begins with the ones with fixed shares. What remains after that is divided among the children according to their inheritance.

"When there are no children, grandchildren through sons have the same position as children, so that grandsons are like sons and grand-daughters are like daughters. They inherit as they inherit and they overshadow as they overshadow. If there are both children and grandchildren through sons, and there is a male among the children, then the grandchildren through sons do not share in the inheritance with him.

"If there is no surviving male among the children, and there are two or more daughters, the granddaughters through a son do not share in the inheritance with them unless there is a male who is in the same position as them in relation to the deceased, or further than them. His presence gives access to whatever is left over, if any, to whoever is in his position and whoever is above him of the granddaughters through sons. If something is left over, they divide it among them, and the male takes the portion of two females. If nothing is left over, they have nothing.

"If the only descendant is a daughter, she takes half, and if there are one or more grand-daughters through a son who are in the same position to the deceased, they share a sixth. If there is a male in the same position as the granddaughters through a son in relation to the deceased, they have no share and no sixth.

"If there is a surplus after the allotting of shares to the people with fixed shares, the surplus goes to the male and whoever is in his position and whoever is above him of the female descendants through sons. The male has the share of two females. The one who is more distant in relationship than grandchildren through sons has nothing. If there is no surplus, they have nothing. That is because Allah, the Blessed, the Exalted, said in His Book, 'Allah charges you about your children that the male has the like of the portion of two females. If there are more than two women they have two thirds of what is left. If there is one, she has a half.'" (Sura 4 ayat 10)

027 : 000B : Section 338

Malik said, "The inheritance of a husband from a wife when she leaves no children or grandchildren through sons is a half. If she leaves children or grandchildren through sons, male or female, by her present or previous husbands, the husband has a quarter after bequests or debts. The inheritance of a wife from a husband who does not leave children or grandchildren through sons is a quarter. If he leaves children or grandchildren through sons, male or female, the wife has an eighth after bequests and debts. That is because Allah, the Blessed, the Exalted! said in His Book, 'You have a half of what your wives leave if they have no children. If they have children, you have a fourth of what they leave after bequests and debts. They have a fourth of what you leave if you have no children. If you have children, they have an eighth after bequests or debts.'" (Sura4ayat 11).

027 : 000C : Section 339

Malik said, "The generally agreed on way of doing things among us about which there is no dispute and what I have seen the people of knowledge in our city doing is that when a father inherits from a son or a daughter and the deceased leaves children, or grandchildren through a son, the father has a fixed share of one sixth. If the deceased does leave any children or male grandchildren through a son, the apportioning begins with those with whom the father shares in the fixed shares. They are given their fixed shares. If a sixth or more is left over, the sixth and what is above it is given to the father, and if there is less than a sixth left, the father is given his sixth as a fixed share (i.e. the other shares are adjusted.)

"The inheritance of a mother from her child, if her son or daughter dies and leaves children or male or female grandchildren through a son, or leaves two or more full or half siblings is a sixth. If the deceased does not leave any children or grandchildren through a son, or two or more siblings, the mother has a whole third except in two cases. One of them is if a man dies and leaves a wife and both parents. The wife has a fourth, the mother a third of what remains, (which is a fourth of the capital). The other is if a wife dies and leaves a husband and both parents. The husband gets half, and the mother a third of what remains, (which is a sixth of the capital). That is because Allah, the Blessed, the Exalted, says in His Book, 'His two parents each have a sixth of what he leaves if he has children. If he does not have children, and his parents inherit from him, his mother has a third. If he has siblings, the mother has a sixth.' (Sura 4 ayat 11). The sunna is that the siblings be two or more."

027 : 000D : Section 340

Malik said, "The generally agreed upon way of doing things among us is that maternal half-siblings do not inherit anything when there are children or grandchildren through

sons, male or female. They do not inherit anything when there is a father or the father's father. They inherit in what is outside of that. If there is only one male or female, they are given a sixth. If there are two, each of them has a sixth. If there are more than that, they share in a third which is divided among them. The male does not have portion of two females. That is because Allah, the Blessed, the Exalted, says in His Book, 'If a man or woman has no direct heir, and he has a brother or sister, by the mother, each of them has a sixth. If there are more than two, they share equally in a third.'" (Sura 4 ayat 12).

027 : 000E : Section 341

Malik said, "The generally agreed on way of doing things among us is that full siblings do not inherit anything with sons nor anything with grandsons through a son, nor anything with the father. They do inherit with the daughters and the granddaughters through a son when the deceased does not leave a paternal grandfather. Any property that is left over, they are in it as paternal relations. One begins with the people who are allotted fixed shares. They are given their shares. If there is anything left over after that, it belongs to the full siblings. They divide it between themselves according to the Book of Allah, whether they are male or female. The male has a portion of two females. If there is nothing left over, they have nothing.

"If the deceased does not leave a father or a paternal grandfather or children or male or female grandchildren through a son, a single full sister gets a half. If there are two or more full sisters, they get two thirds. If there is a brother with them, sisters, whether one or more, do not have a fixed share. One begins with whoever shares in the fixed shares. They are given their shares. Whatever remains after that goes to the full siblings. The male has the portion of two females except in one case, in which the full siblings have nothing. They share in this case the third of the half-siblings by the mother. That case is when a woman dies and leaves a husband, a mother, half-siblings by her mother, and full siblings. The husband has a half. The mother has one sixth. The half-siblings by the mother have a third. Nothing is left after that, so the full siblings share in this case with the half-siblings by the mother in their third. The male has the portion of two females in as much as all of them are siblings of the deceased by the mother. They inherit by the mother. That is because Allah, the Blessed, the Exalted, said in His Book, 'If a man or a woman has no direct heir and he has a brother or a sister, each one of the two gets a sixth. If there are more than that, they share equally in the third.' (Sura 4 ayat 12). They therefore share in this case because all of them are siblings of the deceased by the mother."

027 : 000F : Section 342

Malik said, "The generally agreed on ways of doing things among us is that when there are no full siblings with them, half-siblings by the father take the position of full siblings.

Their males are like the males of the full siblings, and their females are like their females except in the case where the half-siblings by the mother and the full siblings share, because they are not offspring of the mother who joins these."

Malik said, "If there are both full siblings and half-siblings by the father and there is a male among the full siblings none of the half-siblings by the father have any inheritance. If there is one or more females in the full siblings and there is no male with them, the one full sister gets a half, and the half sister by the father gets a sixth, completing the two-thirds. If there is a male with the half-sisters by the father, they have no share. The people of fixed shares are given their shares and if there is something left after that it is divided between the half-siblings by the father. The male has the portion of two females. If there is nothing left over, they get nothing. If the full siblings consist of two or more females, they get two-thirds, and the half-sisters by the father get nothing with them unless there is a half-brother by the father with them. If there is a half-brother by the father with them, the people of fixed shares are given their shares and if there is something left over after that, it is divided between the half-siblings by the father. The male gets the portion of two females. If there is nothing left over, they get nothing. Half-siblings by the mother, full-siblings, and half-siblings by the father, each have a sixth (when they are only one). Two and more share a third. The male has the same portion as the female. They are in the same position in it."

027 : 001 : Section 343

Yahya related to me from Malik from Yahya ibn Said that he had heard that Muawiya ibn Abi Sufyan wrote to Zayd ibn Thabit asking him about the grandfather. Zayd ibn Thabit wrote to him, "You have written to me asking me about the grandfather. Allah knows best. That is part of what is only determined by the amirs, i.e. the khalifs. I was present with two khalifs before you who gave the grandfather a half with one sibling, and a third with two. If there were more siblings, they did not decrease his third."

027 : 002 : Section 343

Yahya related to me from Malik from Ibn Shihab from Qabisa ibn Dhu'ayba that Umar ibn al-Khattab gave the grandfather "what people give him today."

027 : 003 : Section 343

Yahya related to me from Malik that he had heard that Sulayman ibn Yasar said, "Umar ibn al-Khattab, Uthman ibn Affan, andZayd ibn Thabit gave the grandfather a third with full siblings". Malik said, "The generally agreed on way of doing things among us and

what I have seen the people of knowledge in our city doing is that the paternal grandfather does not inherit anything at all with the father. He is given a sixth as a fixed share with the son and the grandson through a son. Other than that, when the deceased does not leave a mother or a paternal aunt, one begins with whoever has a fixed share, and they are given their shares. If there is a sixth of the property left over, the grandfather is given a sixth as a fixed share."

Malik said, "When someone shares with the grandfather and the full siblings in a specified share, one begins with whoever shares with them of the people of fixed shares. They are given their shares. What is left over after that belongs to the grandfather and the full siblings. Then one sees which is the more favourable of two alternatives for the portion of the grandfather. Either a third is allotted to him and the siblings to divide between them, and he gets a share as if he were one of the siblings, or else he takes a sixth from all the capital. Whichever is the best portion for the grandfather is given to him. What is left after that, goes to the full siblings. The male gets the portion of two females except in one particular case. The division in this case is different from the preceding one. This case is when a woman dies and leaves a husband, mother, full sister and grandfather. The husband gets a half, the mother gets a third, the grandfather gets a sixth, and the full sister gets a half. The sixth of the grandfather and the half of the sister are joined and divided into thirds. The male gets the share of two females. Therefore, the grandfather has two thirds, and the sister has one third."

Malik said, "The inheritance of the half-siblings by the father with the grandfather when there are no full siblings with them, is like the inheritance of the full siblings (in the same situation). The males are the same as their males and the females are the same as their females. When there are both full siblings and half-siblings by the father, the full siblings include in their number the number of half-siblings by the father, to limit the inheritance of the grandfather, i.e., if there was only one full sibling with the grandfather. They would share, after the allotting of the fixed shares, the remainder of the inheritance between them equally. If there were also two half-siblings by the father, their number is added to the division of the sum, which would then be divided four ways. A quarter going to the grandfather and three-quarters going to the full siblings who annex the shares technically allotted to the half-siblings by the father. They do not include the number of half-siblings by the mother, because if there were only half-siblings by the father they would not inherit anything with the grandfather and all the capital would belong to the grandfather, and so the siblings would not get anything after the portion of the grandfather.

"It belongs to the full siblings more than the half-siblings by the father, and the half-siblings by the father do not get anything with them unless the full siblings consist of one sister. If there is one full sister, she includes the grandfather with the half-siblings by her father in the division, however many. Whatever remains for her and these half-siblings by the father goes to her rather than them until she has had her complete share, which is half of the total capital. If there is surplus beyond half of all the capital in what she and the half-siblings by the father acquire it goes to them. The male has the portion of two females. If there is nothing left over, they get nothing."

027 : 004 : Section 344

Yahya related to me from Malik from Ibn Shihab from Uthman ibn Ishaq ibn Kharasha that Qabisa ibn Dhu'ayb said, "A grandmother came to Abu Bakr as-Siddiq and asked him for her inheritance. Abu Bakr said to her, 'You have nothing in the Book of Allah, and I do not know that you have anything in the sunna of the Messenger of Allah, may Allah bless him and grant him peace. Go away therefore, until I have questioned the people.' (i.e. the Companions). He questioned the people, and al-Mughira ibn Shuba said, 'I was present with the Messenger of Allah, may Allah bless him and grant him peace, when he gave the grandmother a sixth.' Abu Bakr said, 'Was there anybody else with you?' Muhammad ibn Maslama al-Ansari stood up and said the like of what al-Mughira said. Abu Bakr as-Siddiq gave it to her. Then the other grandmother came to Umar ibn al-Khattab and asked him for her inheritance. He said to her, "You have nothing in the Book of Allah, and what has been decided is only for other than you, and I am not one to add to the fixed shares, other than that sixth. If there are two of you together, it is between you. If either of you is left alone with it, it is hers."

027 : 005 : Section 344

Yahya related to me from Malik from Yahya ibn Said that al-Qasim ibn Muhammad said, "Two grandmothers came to Abu Bakr asSiddiq, and he wanted to give the sixth to the one who was from the mother's side, and a man of the Ansar said, 'What? Are you omitting the one from whom he would inherit if she died while he was alive?' Abu Bakr divided the sixth between them."

027 : 006 : Section 344

Yahya related to me from Malik from Abdu Rabbih ibn Said that Abu Bakr ibn Abd ar-Rahman ibn al-Harith ibn Hisham only gave a fixed share to two grandmothers (together).

Malik said, "The generally agreed on way of doing things among us in which there is no dispute and which I saw the people of knowledge in our city doing, is that the maternal grandmother does not inherit anything at all with the mother. Outside of that, she is given a sixth as a fixed share. The paternal grandmother does not inherit anything along with the mother or the father. Outside of that she is given a sixth as a fixed share." If both the paternal grandmother and maternal grandmother are alive, and the deceased does not have a father or mother outside of them, Malik said, "I have heard that if the maternal grandmother is the nearest of the two of them, then she has a sixth instead of the paternal grandmother. If the paternal grandmother is nearer, or they are in the same position in

relation to the deceased, the sixth is divided equally between them."

Malik said, "None of the female grand-relations except for these two has any inheritance because I have heard that the Messenger of Allah, may Allah bless him and grant him peace, gave the grandmother inheritance, and then Abu Bakr asked about that until someone reliable related from the Messenger of Allah, may Allah bless him and grant him peace, that he had made the grandmother an heir and given a share to her. Another grandmother came to Umar ibn al-Khattab, and he said, 'I am not one to add to fixed shares. If there are two of you together, it is between you. If either of you is left alone with it, it is hers.' " Malik said, "We do not know of anyone who made other than the two grandmothers heirs from the beginning of Islam to this day."

027 : 007 : Section 344

Yahya related to me from Malik from Zayd ibn Aslam that Umar ibn al-Khattab asked the Messenger of Allah, may Allah bless him and grant him peace, about someone who died without parents or offspring, and the Messenger of Allah, may Allah bless him and grant him peace, said to him, "The ayat which was sent down in the summer at the end of the Surat an-Nisa (Sura 4) is enough for you."

Malik said, "The generally agreed on way of doing things among us, in which there is no dispute, and which I saw the people of knowledge in our city doing, is that the person who leaves neither parent or offspring can be of two types. As for the kind described in the ayat which was sent down at the beginning of the Surat an-Nisa in which Allah, the Blessed, the Exalted! said, 'If a man or a woman has no direct heir, but has a brother or a sister by the mother, each of the two has a sixth. If there are more than that, they share equally in a third.' (Sura 4 ayat 12) This heirless one does not have heirs among his mother's siblings since there are no children or parents. As for the other kind described in the ayat which comes at the end of the Surat an-Nisa, Allah, the Blessed, the Exalted, said in it, 'They will ask you for a decision. Say, "Allah gives you a decision about the indirect heirs. If a man perishes having no children, but he has a sister, she shall receive a half of what he leaves, and he is her heir if she has no children. If there are two sisters, they shall receive two-thirds of what he leaves. If there are brothers and sisters, the male shall receive the portion of two females. Allah makes clear to you that you might not go astray. Allah has knowledge of everything.'" (Sura 4 ayat 176).

Malik said, "If this person without direct heirs (parents) or children has siblings by the father, they inherit with the grandfather from the person without direct heirs. The grandfather inherits with the siblings because he is more entitled to the inheritance than them. That is because he inherits a sixth with the male children of the deceased when the siblings do not inherit anything with the male children of the deceased. How can he not be like one of them when he takes a sixth with the children of the deceased? How can he not take a third with the siblings while the brother's sons take a third with them? The grandfather is the one who overshadows the half-siblings by the mother and keeps them

from inheriting. He is more entitled to what they have because they are omitted for his sake. If the grandfather did not take that third, the half-siblings by the mother would take it and would take what does not return to the half-siblings by the father. The half-siblings by the mother are more entitled to that third than the half-siblings by the father while the grandfather is more entitled to that than the half-siblings by the mother."

027 : 008 : Section 345

Yahya related to me from Malik from Muhammad ibn Abi Bakr ibn Muhammad ibn Amribn Hazm that Abdar-Rahman ibn Hanthala az-Zurqi was informed by a mawla of Quraysh, who used to be known as Ibn Mursi, that he was sitting with Umar ibn al-Khattab, and when they had prayed dhuhr, he said, "Yarfa! Bring that letter! (a letter which he had written about the paternal aunt.) We asked about her and asked for information about her." Yarfa brought it to him. He called for a small vessel or a drinking-bowl in which there was water. He erased the letter in it. Then he said, "Had Allah approved of you as an heir, we would have confirmed you. Had Allah approved of you, we would have confirmed you."

027 : 009A : Section 345

Yahya related to me from Malik that Muhammad ibn Abi Bakr ibn Hazm heard his father say many times, "Umar ibn al-Khattab used to say, 'It is a wonder that the paternal aunt is inherited from and does not inherit.'"

027 : 009B : Section 346

Malik said, "The generally agreed on way of doing things among us, in which there is no dispute, and which I saw the people of knowledge in our city doing, about paternal relations is that full brothers are more entitled to inherit than half-brothers by the father and half-brothers by the father are more entitled to inherit than the children of the full brothers. The sons of the full brothers are more entitled to inherit than the sons of the half-brothers by the father. The sons of the half-brothers by the father are more entitled to inherit than the sons of the sons of the full brothers. The sons of the sons of the half-brothers by the father's side are more entitled to inherit than the paternal uncle, the full brother of the father. The paternal uncle, the full brother of the father, is more entitled to inherit than the paternal uncle, the half-brother of the father on the father's side. The paternal uncle, the half-brother of the father on the father's side is more entitled to inherit than the sons of the paternal uncle, the full brother of the father. The son of the paternal uncle on the father's side is more entitled to inherit than the paternal great uncle, the full brother of the paternal grandfather."

Malik said, "Everything about which you are questioned concerning the inheritance of the paternal relations is like this. Trace the genealogy of the deceased and whoever among the paternal relations contends for inheritance. If you find that one of them reaches the deceased by a father and none of them except him reaches him by a father, then make his inheritance to the one who reaches him by the nearest father, rather than the one who reaches him by what is above that. If you find that they all reach him by the same father who joins them, then see who is the nearest of kin. If there is only one half-brother by the father, give him the inheritance rather than more distant paternal relations. If there is a full brother and you find them equally related from a number of fathers or to one particular father so that they all reach the genealogy of the deceased and they are all half-brothers by the father or full brothers, then divide the inheritance equally among them. If the parent of one of them is an uncle (the full-brother of the father of the deceased) and whoever is with him is an uncle (the paternal half brother of the father of the deceased), the inheritance goes to the sons of the full brother of the father rather than the sons of the paternal half-brother of the father. That is because Allah, the Blessed, the Exalted, said, 'Those related by blood are nearer to one another in the Book of Allah, surely Allah has knowledge of everything.'"

Malik said, "The paternal grandfather, is more entitled to inherit than sons of the full-brother, and more entitled than the uncle, the full brother of the father. The son of the father's brother is more entitled to inherit from mawali retainers (freed slaves) than the grandfathers."

027 : 009C : Section 347

Malik said, "The generally agreed on way of doing things among us in which there is no dispute and which I saw the people of knowledge in our city doing, is that the child of the half-sibling by the mother, the paternal grandfather, the paternal uncle who is the maternal half-brother of the father, the maternal uncle, the great-grandmother who is the mother of the mother's father, the daughter of the full-brother, the paternal aunt, and the maternal aunt do not inherit anything by their kinship."

Malik said, "The woman who is the furthest relation of the deceased of those who were named in this book, does not inherit anything by her kinship, and women do not inherit anything apart from those that are named in the Qur'an. Allah, the Blessed, the Exalted, mentioned in His Book the inheritance of the mother from her children, the inheritance of the daughters from their father, the inheritance of the wife from her husband, the inheritance of the full sisters, the inheritance of the half-sisters by the father and the inheritance of the half-sisters by the mother. The grandmother is made an heir by the example of the Prophet, may Allah bless him and grant him peace, made about her. A woman inherits from a slave she frees herself because Allah, the Blessed, the Exalted, said in His Book, 'They are your brothers in the deen and your mawali.'"

027 : 010 : Section 348

Yahya related to me from Malik from Ibn Shihab from Ali ibn Husayn ibn Ali from Umar ibn Uthman ibn Affan from Usama ibn Zayd that the Messenger of Allah, may Allah bless him and grant him peace, said, "A muslim does not inherit from a kafir."

027 : 011 : Section 348

Yahya related to me from Malik from Ibn Shihab that Ali ibn Husayn ibn Ali ibn Abi Talib told him that Aqil and Talib inherited from Abu Talib, and Ali did not inherit from him. Ali said, "Because of that, we have given up our portion of ash Shab." (A house belonging to Banu Hashim).

027 : 012 : Section 348

Yahya related to me from Malik from Yahya ibn Said from Sulayman ibn Yasar that Muhammad ibn al-Ashath told him that he had a christian or jewish paternal aunt who died. Muhammad ibn al-Ashath mentioned that to Umar ibn al-Khattab and said to him, "Who inherits from her?" Umar ibn al-Khattab said to him, "The people of her deen inherit from her." Then he went to Uthman ibn Affan, and asked him about that. Uthman said to him, "Do you think that I have forgotten what Umar ibn al-Khattab said to you? The people of her deen inherit from her."

027 : 013 : Section 348

Yahya related to me from Malik from Yahya ibn Said from Ismail ibn Abi Hakim that Umar ibn Abd al-Aziz freed a christian who then died. Ismail said, "Umar ibn Abd al-Aziz ordered me to put his property in the bayt al-mal."

027 : 014 : Section 348

Yahya related to me from Malik from a reliable source of his who had heard Said ibn al-Musayyab say, "Umar ibn al-Khattab refused to let anyone inherit from the non-arabs except for one who was born among the arabs."

Malik said, "If a pregnant woman comes from the land of the enemy and gives birth in

arab land so that he is her (an arab) child, he inherits from her if she dies, and she inherits from him if he dies, by the Book of Allah."

Malik said, "The generally agreed on way of doing things among us and the sunna in which there is no dispute, and what I saw the people of knowledge in our city doing, is that a Muslim does not inherit from a kafir by kinship, clientage (wala'), or maternal relationship, nor does he (the Muslim) overshadow any (of the kafirs) from his inheritance.

Malik said, "Similarly, someone who forgoes his inheritance when he is the chief heir does not overshadow anyone from his inheritance."

027 : 015 : Section 349

Yahya related to me from Malik from Rabia ibn Abi Abd ar-Rahman from more than one of the people of knowledge of that time, that those who were killed on the Day of the Camel, the Day of Siffin, the Day of al-Harra, and the Day of Qudayd did not inherit from each other. None of them inherited anything from his companion unless it was known that he had been killed before his companion.

Malik said, "That is the way of doing things about which there is no dispute, and which none of the people of knowledge in our city doubt. The procedure with two mutual heirs who are drowned, or killed in another way, when it is not known which of them died first is the same - neither of them inherits anything from his companion. Their inheritance goes to whoever remains of their heirs. They are inherited from by the living."

Malik said, "No one should inherit from anyone else when there is doubt, and one should only inherit from the other when there is certainty of knowledge and witnesses. That is because a man and his mawla whom his father has freed might die at the same time. The sons of the free man could say, 'Our father inherited from the mawla.' They should not inherit from the mawla without knowledge or testimony that he died first. The living people most entitled to his wala' inherit from him."

Malik said, "Another example is two full brothers who die. One of them has children and the other does not. They have a half-brother by their father. It is not known which of them died first, so the inheritance of the childless one goes to his half-brother by the father. The children of the full-brother get nothing."

Malik said, "Another example is when a paternal aunt and the son of her brother die, or else the daughter of the brother and her paternal uncle. It is not known which of them died first. The paternal uncle does not inherit anything from the daughter of his brother, and the son of the brother does not inherit anything from his paternal aunt."

027 : 016 : Section 350

Yahya related to me from Malik that he had heard that Urwa ibn az-Zubayr said about the child of lian and the child of fornication, that if they died, the mother inherited her right from them according to the Book of Allah, the Mighty, the Majestic! The siblings by the mother had their rights. The rest was inherited by the former masters of the mother if she was a freed slave. If she was a free woman by origin, she inherited her due and the siblings by the mother inherited their due, and the rest went to the Muslims.

Malik said, "I heard the same as that from Sulayman ibn Yasar."

Malik said, "That is what I saw the people of knowledge in our city doing."