



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

July 2, 1980

FILE NO. S-1496

STATE MATTERS:
Scope of the Facilities for
the Handicapped Act

Honorable David C. Shapiro
Senate Minority Leader
Illinois State Senate
Springfield, Illinois

Dear Senator Shapiro:

I have your letter wherein you inquire whether remodeling of a privately-owned "public building", as defined in the Facilities for the Handicapped Act (Ill. Rev. Stat. 1979, ch. 111½, par. 3701 et seq.) must be done in compliance with Accessibility Standards Illustrated. In my opinion the Accessibility Standards promulgated pursuant to the Facilities for the Handicapped Act do not apply to the remodeling of privately-owned public buildings.

Section 2 of the Facilities for the Handicapped Act (Ill. Rev. Stat. 1979, ch. 111½, par. 3702) defines "public building" as:

Honorable David C. Shapiro - 2.

"* * * (a) a building, structure or improved area owned or leased by this State or its political subdivisions; (b) a building, structure or improved area used primarily by the general public as a place of gathering or amusement, including but not limited to: theaters, restaurants, hotels and stadia; (c) office buildings and factories, not including the second floor of any two-story office building or factory having less than 15,000 square feet at the second floor level nor any occupied levels below grade having less than 15,000 square feet unless the building is publicly owned.

* * *

The Capital Development Board is authorized to promulgate standards delineating the minimum requirements of facilities for the handicapped. (Ill. Rev. Stat. 1979, ch. 111½, par. 3704.)

The legislature has broken coverage by the Accessibility Standards down into categories of remodeling and construction. The term "remodel" is distinguished by a specific statutory definition, which defines the term as follows:

"

* * *

* * * with respect to an existing public building to construct an addition or substantially alter the design or layout." (Ill. Rev. Stat. 1979, ch. 111½, par. 3702.)

The term "construction" is not specifically defined.

Section 5 of the Act (Ill. Rev. Stat. 1979, ch. 111½, par. 3705), which sets forth the procedures to be used to ensure that governmental entities comply with the standards, provides as follows:

Honorable David C. Shapiro - 3.

"One year after approval of this Act, the appropriate contracting authority must determine that the plans and specifications of every public building which the State or any political subdivision, governmental entity or public authority

(a) constructs meets these standards, or

(b) remodels meets these standards to the extent deemed feasible."

Section 6 of the Act (Ill. Rev. Stat. 1979, ch. 111½, par. 3706), which outlines the requirements for all other public buildings, provides as follows:

"After the effective date of this amendatory Act of 1975, no building permit or other official authorization for construction of a public building as defined in Section 2, by any person is valid unless it recites that the plans and specifications meet these standards." (Emphasis added.)

It has been held that the use by the legislature of certain words in one instance and different words in another indicates that different results were intended. (Illinois State Toll Highway Authority v. Karn (1973), 9 Ill. App. 3d 784, 787-83.) Thus, while publicly-owned facilities must be constructed and remodeled in accordance with the Accessibility Standards, privately-owned facilities need only comply with such standards at the construction stage.

Section 6 does not mention remodeling; therefore, it seems clear that the legislature did not intend the Accessibility Standards to apply to the remodeling of private buildings. Since an administrative agency may not, under its

Honorable David C. Shapiro - 4.

authority to administer an Act, contravene express statutory language (People ex rel. Polen v. Hoehler (1950), 405 Ill. 322), it is my opinion that the Capital Development Board's Accessibility Standards Illustrated may be applied only to the construction or remodeling of public buildings owned by governmental entities or to the construction of public buildings owned by private parties.

Very truly yours,

A T T O R N E Y G E N E R A L