

September 28, 1999

VIA FACSIMILE TRANSMISSION

Wayne Saunders, City Manager
City of Clermont
P.O. Box 120219
Clermont, Florida 34712-0219

Dear Mr. Saunders:

This letter is in response to your concerns over compliance with the Florida Accessibility Code for Building Construction (1997) (the code) in the construction of a new fire station in the City of Clermont. Tom Pierce, Director, Division of Housing and Community Development, responded to your concerns in writing earlier this month. However, additional information may be helpful to you.

Whether an elevator is required in the construction of your new fire station is a matter of federal law. The Florida American's with Disabilities Act, Part V of chapter 553, Florida Statutes, adopts the Americans with Disabilities Act Accessibility Guidelines (ADAAG) as the minimum accessibility standards for construction in Florida. The state is bound by the wording of the ADAAG as well as any interpretations issued thereof by the federal government.

Section 4.1.3 (5) of the ADAAG requires that new multi-story buildings be constructed with one passenger elevator to serve each level and mezzanine, unless specifically exempted. The ADAAG specifically exempts from the elevator requirement buildings which are less than three stories or that have less than 3000 square feet per story, unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or other type of facility determined by the U.S. Attorney General. While it would appear that this exemption would cover your new fire station, the requirements of Title II of the Americans with Disabilities Act (ADA) also apply to your facility and specifically prohibit the application of the elevator exemption to buildings owned by Title II entities, such as the City of Clermont. Mr. Pierce's letter to you, dated September 14th, quotes this language from the Title II Technical Assistance Manual.

The Florida ADA, in addition to adopting the ADAAG as the minimum construction standards, adopts specific standards which are more stringent than ADAAG. Among those is the requirement that owners of all buildings in Florida provide "vertical accessibility to all levels" of the building, regardless of the applicable ADAAG elevator exemption. *See* section 553.509, Florida Statutes. The exemption you refer to in your letter for "occupiable spaces and rooms not open to the public" applies to the Florida-specific requirement for vertical accessibility, not the ADAAG requirement for an elevator. *See id.* While the Florida Building Commission is authorized to waive the Florida specific requirements of the Florida ADA, that authority is limited in that no waiver can be issued in violation of federal law. *See* section 553.512, Florida Statutes. As Mr. Pierce's letter explains, the commission could not issue a waiver of the Florida vertical accessibility requirement in this case because it would violate the Title II requirement.

Please find enclosed two letters issued by the Department of Justice interpreting the Title II requirements for newly constructed and renovated fire stations. If you are interested in obtaining an interpretation from DOJ regarding your specific situation, please contact Jim Bostrom in the Civil Rights Division at (202) 307-2584, or you may want to contact Marsha Mazz, Technical Coordinator with the Federal Access Board at 800-872-2253, ext. 21. If you need further information from this department, please contact Suzanne H. Schmith, Assistant General Counsel, at (850) 922-1689.

Very Truly Yours,

Steven M. Seibert

SHS/jr
Enclosures