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FILE NO. 94-019

CIVIL RIGHTS:
Applicability of the
Environmental Barriers Act to
Certain Multi-Family Construction

Roger D. Sweet
Executive Director
Capital Development Board
401 South Spring Street
Springfield, Illinois 62706-4050

Dear Mr. Sweet:

I have your letter wherein you pose the following questions regarding the application of the provisions of the Environmental Barriers Act (410 ILCS 25/1 et seq. (West 1992)), and the Illinois Accessibility Code (71 Ill. Adm. Code 400.110 et seq.). Firstly, you ask whether a privately owned apartment building which is constructed or rehabilitated with proceeds of a loan derived solely from Federal funds administered by the city of Chicago, is a "public facility", within the meaning of subsection 3(r)(1)(iii) of the Environmental Barriers Act (EBA) (410 ILCS 25/3(r)(1)(iii) (West 1992)) and section 400.210 of the Illinois Accessibility Code ("Code") (71 Ill. Adm. Code 400.210).

Secondly, you ask whether the construction or rehabilitation of a privately owned apartment building which is not a "multi-story housing unit", for purposes of subsection 3(o) of the EBA (410 ILCS 25/3(o) (West 1992)), but which is a "public facility", as defined in subsection 3(r)(1)(iii) of the EBA, is exempt from the requirements of the Act. For the reasons hereinafter stated, it is my opinion that a privately owned apartment building which is constructed or rehabilitated with Federal loan proceeds administered by the city is not a "public facility", for purposes of the EBA. Further, it is my opinion that a privately owned apartment building which is not a "multi-story housing unit", but which is a "public facility", for purposes of the EBA, because its construction has been financed with loans or grants from the city, is exempt from compliance with the provisions of the Code only if it contains fewer than five dwelling units.

A review of the overall scope of the EBA (410 ILCS 25/1 et seq. (West 1992)) is helpful in understanding the nature of your questions. Section 2 of the EBA (410 ILCS 25/2 (West 1992)) states that public policy favors eliminating environmental barriers in public facilities and multi-story housing units. Section 3 defines terms used in the Act. Section 4 (410 ILCS 25/4 (West 1992)) authorizes the Capital Development Board to adopt and publish accessibility standards, which it has done in the form of the Code. Section 5 of the EBA (410 ILCS 29/5 (West

1992)) provides that the adopted standards shall apply to (a) newly constructed public facilities, (b) newly constructed multi-story housing units, (c) certain alterations to public facilities owned by the State and (d) certain alterations to public facilities owned by local governmental entities or private persons. Thus, the standards are not made applicable to the alteration or renovation of privately owned multi-story housing units, or to the construction or alteration of other privately owned housing unless such buildings fall within the definition of "public facilities". Subsequent sections of the EBA provide for enforcement.

With respect to your specific questions, section 3 of the EBA provides the following pertinent definitions:

> "
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> * * *
>
> (k) 'Governmental unit' means the State or any political subdivision thereof, including but not limited to any county, town, township, city, village, municipality, municipal corporation, school district or other special purpose district.
>
> * * *
>
> (o) 'Multi-story housing unit' means any building of 4 or more stories containing 10 or more dwelling units constructed to be held out for sale or lease by any person to the public.
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> * * *
>
> (r) 'Public facility' means: (1) any building, structure or improved area which is (i) owned by or on behalf of a governmental

> unit, (ii) leased, rented or used, in whole or in part, by a governmental unit, or (iii) financed, in whole or in part, by a grant or a loan made or guaranteed by a governmental unit;
>
> * * *

"

The materials you have provided indicate that the Federal Department of Housing and Urban Development (HUD), on an annual basis, makes funding available to the Chicago Department of Housing (DOH) from a Community Development Block Grant and the HOME Program. These funds are subject to HUD regulations and program restrictions, and their use is monitored by the Federal agency. The city council appropriates the funds for use by DOH, and any individual loan for more than $150,000 is subject to a separate authorizing ordinance specifying the source as well as the use of the loan.

Borrowers wishing to obtain a loan for a multi-family housing facility submit an application to DOH, which considers whether the project satisfies HUD, as well as DOH, criteria. DOH has discretion to reject applications which satisfy applicable HUD requirements but which fail DOH criteria. When a loan is approved, including the adoption of an authorizing ordinance, if necessary, loan documents are prepared and executed showing the city as lender. Once the loan has closed, loan funds are obtained from HUD only as they are needed, on a draw-by-draw basis.

The city comptroller's office issues a check for each draw in the name of the city which is payable to the borrower.

While the city has considerable discretion in making loans, and administers the loan funds in much the same way it would if city funds were being used, it is clear that the funds involved remain, at all times, Federal funds. The funds are obtained from HUD only as needed for immediate distribution to borrowers. HUD monitors the use of the funds and DOH discretion can be exercised only within the parameters set by HUD for such use. No city funds are used, and the city does not guarantee the loans.

Under section 3 of the EBA, the city is a "governmental unit", but the Federal government and its agencies are not. A building which is financed, in whole or in part, by a grant or loan made or guaranteed by the city is a "public facility", for purposes of the EBA. However, a building financed by a grant or loan made by a Federal agency is not a "public facility".

Clearly, in the circumstances you have described, the city is not a guarantor of the loan. It is denominated a lender in loan documents only because it is responsible, under Federal law, for administering loans made to borrowers for projects located within the geographical boundaries of the city. Therefore, it is my opinion, based upon these factors, that privately owned apartment buildings which are constructed or rehabilitated

with the proceeds of such HUD loans are not "public facilities", within the meaning of section 3 of the EBA, because they are not financed by a grant or loan made or guaranteed by a "governmental unit". Therefore, such buildings are not required to comply with the provisions of the Code. (As noted below, however, they may be subject to Federal accessibility standards).

Your second question is whether a privately owned apartment building which is not a "multi-story housing unit", as defined in section 3 of the EBA, but which is a "public facility" because its construction or rehabilitation has been financed by a city loan or grant, is exempt from the requirements of the Code. Specifically, you note seemingly contradictory language in Part 400 of the Code.

Section 400.330 of the Code provides, in part:

> "The following buildings or parts of buildings are exempted from applicability of the minimum requirements for new construction.
>
> * * *
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> b) Privately owned apartment buildings which are not herein classified as multi-story housing units.
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> * * *
>
> d) Housing, owned or financed by a governmental unit consisting of less than 5 dwelling units located on an individual site, and any sheds, storage buildings, or garages incidental thereto.
>
> * * * "

Section 400.320 of the Code, however, specifically provides that "public facilities" which are "housing units owned or financed by a governmental unit which consist of five or more dwelling units" must comply with the Code. (71 Ill. Adm. Code 400.320(d).) Section 400.210 (71 Ill. Adm. Code 400.210) defines "Housing, Financed or Guaranteed by a Governmental Unit" as follows:

> " * * *
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> * * * any building, facility or portion thereof * * * which contains one or more dwelling units or sleeping accommodations, and which is owned by or on behalf of a governmental unit, or financed, in whole or in part, for either initial construction or subsequent alteration, by a grant or a loan made or guaranteed by a governmental unit. Such housing may include, but is not limited to, one family dwellings, multi-family dwellings including multi-story apartment buildings, group homes, dormitories, housing for the elderly.
>
> * * * "
>
> (Emphasis added.)

This definition clearly includes privately owned apartment buildings which are not "multi-story housing unit[s]", but which are financed by city loans.

Pursuant to section 400.510 of the Code (71 Ill. Adm. Code 400.510), alterations to public facilities are also required to comply with specified accessibility standards unless exempted from applicability of the minimum requirements for new construction. (71 Ill. Adm. Code 400.520.)

In interpreting administrative rules, each provision must be construed in connection with every other provision so as to produce a harmonious whole. (Kneip v. Board of Fire and Police Commissioners (1986), 150 Ill. App. 3d 870, 872-3.) Rules must be read, if possible, so that no word, clause or sentence is rendered superfluous or meaningless. Ekco, Inc. v. Edgar (1985), 135 Ill. App. 3d 557, 561.

Although section 400.330(b) of the Code generally exempts privately owned apartment buildings which are not classified as multi-story housing units from compliance with accessibility standards, that provision must be interpreted with reference to sections 400.330(d) and 400.320 of the Code. Clearly, the fact that the construction or rehabilitation of a privately owned apartment building is financed by a governmental unit narrows the general exemption otherwise applicable to such structures. Thus, under section 400.320 of the Code, facilities which contain at least five dwelling units and which are financed by a governmental unit are required to comply with the provisions of the Code, even though the same facilities, if privately financed, might be exempted from compliance therewith under section 400.330(b) of the Code. To adopt any other construction of these sections of the Code would render section 400.320 meaningless.

Therefore, it is my opinion that a privately owned apartment building which is constructed or rehabilitated with financing from a governmental unit, and which contains at least five dwelling units, is required to comply with the Code's accessibility standards, even though the building is not a "multi-story housing unit" as defined in the EBA.

With respect to both of the questions you have raised, it should be noted that Federal law may require the application of accessibility standards which are substantially similar to the Code in instances in which the EBA and the Code are not directly applicable. Specifically, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) provides that no otherwise qualified individual with a disability shall, solely by reason of the disability, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance. Each Federal agency is directed to promulgate regulations to carry out the section. HUD regulations relating to accessibility requirements for both new construction and alterations to existing multi-family housing projects financed with HUD funds are codified at 24 C.F.R. part 8. Borrowers to whom the Illinois EBA and Code are not applicable should be made aware of the Federal requirements.

Further, section 804 of the Fair Housing Act (42 U.S.C. § 3604) requires that the design and construction of covered

multi-family dwellings first occupied in March, 1991, or after, must meet accessibility standards which are substantially similar to the Illinois Code. The Federal statute defines "covered multi-family dwellings" to include:

> " * * *
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> (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
>
> (B) ground floor units in other buildings consisting of 4 or more units.
>
> * * * "

(42 U.S.C. § 3604(f)(7).)

This definition will include some units which are exempted from compliance with the Illinois Code, such as ground floor units in privately owned apartment buildings which are not "multi-story housing units". The Federal statute provides that compliance with the accessibility requirements of a substantially similar State law is deemed to satisfy the requirements of section 804.

Respectfully yours,

ROLAND W. BURRIS
ATTORNEY GENERAL