



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

September 9, 1970

Honorable H. R. Nieman, Jr.
Director
State Building Commission
P. O. Box 12172
Austin, Texas 78711

Opinion No. M-686

Re: Construction of Article
678g, Vernon's Civil
Statutes, relating to
standards and specifi-
cations of public build-
ings and facilities used
by the public.

Dear Admiral Nieman:

Your request for an opinion on the above subject matter reads in part as follows:

"It is requested that you render an Opinion in regard to Article 678g, Chapter 24, Vernon's Civil Statutes.

"1. Responsibility for Enforcement.

"Does the State Building Commission under Section 20 have the authority to require compliance with the Statute in all Public Buildings, and in particular State-owned buildings, including the installation of an elevator.

"2. Application of Act.

"Does the State Building Commission under Section 2 have the authority to declare that the installation of an elevator, access, ramp and adjacent parking area in the State-owned Old Land Office (Museum) Building constitute substantial renovation or modification.

Sections 1, 2, 3, 15 and 20 of Article 678g, Vernon's Civil Statutes, provide as follows:

"Section 1. The provisions of this Act are enacted to further the policy of the State of Texas to encourage and promote the rehabilitation of handicapped or disabled citizens. It is the intent of this Act to eliminate, insofar as possible, unnecessary barriers encountered by aged, handicapped or disabled persons, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings.

"Sec. 2. (a) The standards and specifications set forth in this Act shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective date of this Act from any one of these funds or any combination thereof shall conform to each of the standards and specifications prescribed herein except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded

to the State Building Commission. If it is determined that full compliance is not practicable, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

"(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this Act, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This Act shall apply to temporary or emergency construction as well as permanent buildings.

"Sec. 3. (a) This Act is concerned with non-ambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination and aging.

"(b) It is intended to make all buildings and facilities covered by this Act accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

"...

"Sec. 15. Elevators shall be provided and shall be accessible to, and useable by, the physically disabled at all levels normally used by the general public. Elevator control buttons shall have identifying features for the benefit of the blind. Elevators shall allow for traffic by wheelchairs.

"...

"Sec. 20. (a) The responsibility for administration and enforcement of this Act shall reside primarily in the State Building Commission, but the State Building Commission shall have the assistance of appropriate state rehabilitation agencies in carrying out its responsibilities under this Act. State agencies involved in extending direct services to disabled or handicapped persons are authorized to enter into interagency contracts with the State Building Commission to provide such additional fundings as might be required to insure that service objectives and responsibilities of such agencies are achieved through the administration of this Act. In enforcing this Act the State Building Commission shall also receive the assistance of all appropriate elective or appointive public officials. The State Building Commission shall from time to time inform professional organizations and others of this law and its application.

"(b) The State Building Commission shall have all necessary powers to require compliance with its rules and regulations and modifications thereof and substitutions therefore, including powers to institute and prosecute proceedings in the District Court to compel such compliance, and shall not be required to pay any entry or filing fee in connection with the institution of such proceeding.

"(c) The State Building Commission is authorized to promulgate such rules and regulations as might reasonably be required to implement and enforce this Act. The State Building Commission, after consultation with state rehabilitation agencies, is also authorized to waive any of the standards

and specifications presently set forth in this Act and to substitute in lieu thereof standards or specifications consistent in effect to such standards or specifications as might be adopted by the American Standards Association, Inc. (or its federally-recognized successor in function) subsequent to the effective date of this Act.

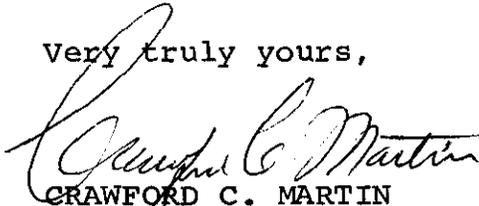
"(d) The respective governing boards of state-supported institutions of higher education are responsible for enforcement of this Act on all properties under their jurisdiction. In all other instances, the responsibility for enforcement of this Act shall be in the State Building Commission."

In view of the foregoing express provisions of Article 678g your questions are answered in the affirmative. You are accordingly advised that the State Building Commission has authority to require compliance with Article 678g, including the installation of an elevator and to declare that the installation of an elevator, access, ramp and adjacent parking area in the State-owned Old Land Office (Museum) Building constitute substantial renovation or modification within the meaning of Article 678g.

S U M M A R Y

The provisions of Article 678g, Vernon's Civil Statutes, relating to standards and specifications of public buildings and facilities, are applicable to the State-owned Old Land Office (Museum) Building.

Very truly yours,



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Prepared by John Reeves
Assistant Attorney General

APPROVED:

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