TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-604
of	:	MARCH 3, 1981
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The Honorable Philip C. Favro, State Fire Marshal has requested an opinion on a question which we have rephrased as follows:

Is a hotel, an apartment house, or a type of similar facility which engages in the business of housing persons, a "home for the aged" as that term is used in Health and Safety Code section 13143 or a "home for the care of aged and senile persons" as that phrase is used in section 13113 of that Code where—(a) the facility caters to and is occupied predominantly by persons over the age of 65; (b) the facility caters to persons 62 years of age or older, but not to the exclusion of others; or (c) the facility does not overtly cater to any particular age group but advertises provision of federally acceptable services designed primarily for persons 62 years of age and older?

CONCLUSION

A hotel, an apartment house or a similar type of facility which engages in the business of housing persons who may be over the age of 62, is neither a "home for the aged" as that term is used in Health and Safety Code section 13143 nor a "home for the care of aged and senile persons" within the meaning of Health and Safety Code section 13113.

ANALYSIS

Section 13143 of the Health and Safety Code[1] directs that the State Fire Marshal with the advice of the State Board of Fire Services adopt rules and regulations establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as, among other purposes, a "home for aged."[2] Section 13113 of the Code provides that among other places, no "home or institution for the care of aged and senile persons" shall be operated unless either a heat-activated fire alarm system or an automatic sprinkler system of a type approved by the State Fire Marshal is installed and maintained in an operable condition therein.

We are asked whether certain facilities—namely a hotel or apartment house that caters to and is occupied predominantly by persons over 65, a hotel or apartment house that caters, but not exclusively, to persons over 62, and a hotel or apartment house that does not cater to any particular age group but advertises the provision of federally acceptable services designed for persons 62 years of age and older—come within the purview of those sections so as to charge the State Fire Marshal with obligations thereunder. We conclude that none of the facilities described constitutes a "home . . . for aged" within the meaning of section 13143 or a "home" for the care of aged . . . persons" within the meaning of section 13113.

Section 13113 mandates the installation of automatic sprinkler systems approved by the State Fire Marshal in certain structures, and reads in pertinent part as follows:

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[1] All statutory references herein are to the Health and Safety Code unless otherwise stated.

[2] The Standards established relate to the adequacy and means of egress, the installation and maintenance of fire extinguishing and fire alarm systems, and the installation and maintenance of appliances, equipment, furnishings, etc., that present a fire, explosion or panic hazard (§ 13143; *cf*. 15 Ops. Cal. Atty. Gen. 129, 129 (1950)).

"(a) Except as otherwise provided in this section*, no person, firm, or corporation shall establish, maintain, or operate any* hospital, children's home, children's nursery, or institution, or *a home or institution for the care of aged or senile persons*, or any sanitarium or institution for insane or mentally retarded persons and any nursing or convalescent home, wherein more than six guests or patients are housed or cared for on a 24-hour-per-day basis *unless there is installed and maintained in an operable condition in every building or portion thereof where patients or guests are housed an automatic sprinkler system approved by the State Fire Marshal.*

"(b) Any hospital, children's home, children's nursery, or institution, or any home or institution for the care of aged or senile persons, or any sanitarium or institution for insane or mentally retarded persons, or any nursing or convalescent home under construction or in existence and operating on March 4, 1972, which does not meet the requirements of this section, may operate or continue to operate without meeting such requirements until June 30, 1976. In no event shall the continued use of such facilities extend beyond that date, unless an approved automatic sprinkler system as required by this section has been installed or is in the process of being installed in accordance with the schedule set forth in subdivision (f).

"(c) . . . . . .

"(d) This section shall not apply to any one-story building or structure of an institution or home for the care of the aged providing 24-hour-per-day care if such building or structure is used or intended to be used for the housing of no more than six ambulatory aged persons. However, such buildings or institutions shall have installed and maintained in an operable condition therein a fire alarm system of a type approved by the State Fire Marshal. Such system shall be activated by detectors responding to products of combustion other than heat.

"(e) . . . . . .

"(f) . . . . . .

"(g) . . . . . .

"(h) . . . . . (Emphases supplied.)

The places enumerated in section 13113 are a partial enumeration of the places listed in section 13143 under which the State Fire Marshal is charged with the duty of adopting building standards and rules and regulations for fire prevention and the protection of life and property against fire and panic. That latter section reads as follows:

> "(a) Except as provided in Section 18930, *the State Fire Marshal,* with the advice of the State Board of Fire Services*, shall prepare, adopt, and submit building standards for approval* pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of this code *and shall prepare and adopt other regulations establishing minimum requirements for the prevention office and for the protection of life and property against fire and panic in any building or structure used or intended for use as* an asylum, jail, mental hospital, hospital, sanitarium, *[a] home for the aged*, children's nursery, children's home or institution not otherwise excluded from the coverage of this subdivision, school, *or any similar occupancy of any capacity*, and in any theater, dancehall, skating rink, auditorium, assembly hall, meeting hall, nightclub, fair building, or similar place of assemblage where 50 or more persons may gather together in a building, room, or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education, and in any building or structure which is open to the public and is used or intended to be used for the showing of motion pictures when an admission fee is charged and when such building or structure has a capacity of 10 or more persons. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of this code for the purposes described in this section. *Regulations adopted pursuant to this subdivision and building standards relating to fire and panic safety published in the State Building Standards Code shall establish minimum requirements relating to the means of egress and the adequacy of exits from, the installation and maintenance office extinguishing and fire alarm systems in, the storage and handling of combustible or explosive materials or substances, and the installation and maintenance of appliances, equipment, decorations, and furnishings that present afire, explosion or panic hazard,* and such minimum requirements shall be predicated on the height and fire-resistive qualities of the building or structure and the type of occupancy for which it is to be used. The building standards and other regulations shall apply to auxiliary or accessory buildings used or intended for use with any of the occupancies mentioned in this subdivision. Violation of any such building standard or other such regulation shall be a violation of the provisions of this chapter.

"[. . . . . .]

"(b) . . . . . (Emphases added.)

We are given the situation where certain hotels and apartment houses are occupied in whole or in part by persons over 62 years of age, and the issue to be resolved is whether those housing facilities are to be considered homes for the aged (§ 13143) or homes or institutions for the care of aged persons (§ 13113). If they are not, then even the fact that the occupants might be considered "guests" within the meanings of those sections, would not charge the State Fire Marshal with duties thereunder with respect to those structures. (*Cf.* 29 Ops. Cal. Atty. Gen. 22, 25 (1957) (a boarding school is a children's institution within the meaning of § 13113, and the persons cared for therein are classified as "guests" within its terms).)

We do not believe that either the hotel, the apartment house, or the "similar facility" described in the request can be considered a home for the aged or a home or institution for the care of aged persons as those terms are used in sections 13143 and 13113 respectively. A "home for the aged" as the term is ordinarily understood, is used to describe a living environment that is designed to furnish some form of protective services or care to persons who dwell therein because of their individual need for such care or service. The primary reason for its existence is the provision of a certain level of care to its occupants, and it is licensed or certified by the state to provide it accordingly. (See e.g.º§§ 1250–1255 and 1275–1284 (health facilities); 1339–1339.27 (primary health service hospitals); §§ 1417–1418 dong term health care facilities); §§ 1500–1513 (community care facilities); §§ 1570–1571 (adult day health care centers).) Indeed, section 13113, with which section 13143 must be read *in pari materia* (29 Ops. Cal. Atty. Gen. 22, 24; *cf. People* v. *Buese* (1963) 220 Cal. App. 2d 802, 807) specifically mentions a "home or institution for the care of aged . . . persons."

A hotel or apartment house is a different occupancy and serves a different function from a home for the care of aged persons and when we construe sections 13143 and 13113 with the ordinary meaning of the last euphemism in mind (*Pearson v. State Social Welfare Board* (1960) 54 Cal. 2d 184, 194–195; *Leroy T. v. Workmen's Comp Appeals Bd.* (1974) 12 Cal. 3d 434, 438; *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155–156; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230) it is clear that they do not embrace the hotel or apartment house described in the request. Whatever differences might exist between an apartment house and a hotel (see *Edward v. City of Los Angeles* (1941) 48 Cal. App. 2d 62, 67; *Stowe v. Fritzie Hotels, Inc*. (1955) 44 Cal. 2d 416, 421–422; *Erwin v. City of San Diego* (1952) ll2 Cal. App. 2d 213, 216–217), neither of them is designed to furnish, nor does its occupant expect to receive, a level of protective health care as is the case with the home for the aged.

Furthermore, we must assume that the Legislature intended the occupancy it denominated a "home for the [care of the] aged" in sections 13143 and 13113 to have characteristics similar to the other occupancies fisted therein (63 Ops. Cal. Atty. Gen. 282, 285 (1980); *cf. People* v. *Buese*, *supra,* 220 Cal. App. 2d at p. 807). Reviewing those other occupancies—to wit, the asylum, the jail, the mental hospital, the hospital, the sanitarium, the children's nursery, the children's home or institution, the school or similar occupancy and the sanitarium or institution for insane or mentally retarded persons, and the nursing or convalescent home—we see that each of them provides an institutionalized setting for the furnishing of protective care and services. That confirms our understanding of what the essence of a "home for the aged" is; it also confirms our conclusion that a hotel or an apartment house, each of which serves a different purpose and does not share those characteristics, was not meant to be covered by those sections.

In 12 Ops. Cal. Atty. Gen. 225 (1948), we concluded that boarding homes for the aged were not hotels within the meaning of the State Housing Act (former § 15020). (See also, 15 Ops. Cal. Atty. Gen. 129, 130 (1950).) In so concluding we stated:

> "While it is true, the definitions found in the State Housing Act for hotels, guests and guest rooms might be broad enough to cover a building used and operated as a home for aged persons or children such institutions are not, in the general sense of the term, hotels. A hotel is a place where all persons desiring lodging are received. It would still be a hotel if it had less than six guest rooms if it were designed and operated as such and held itself out to be a hotel or inn as it was called in common law. The entire Housing Act must be read together with the provisions of the Welfare and Institutions Code and we do not believe that it was the intention of the Legislature that homes for aged persons or children should be treated as hotels because the members or inmates might come within a strained definition of guests and the building occupied might have six or more 'guest rooms" and, therefore, be a hotel within the definition found in the Building Code." (12 Ops. Cal. Atty. Gen., *supra*, at p. 228.)

Based on the foregoing, we reaffirm those observations and conclude herein that neither a hotel nor an apartment house nor a similar type of facility, is a "home for the aged" within the meaning of section 13143 or a "home for the care of aged and senile persons" within the meaning of section 13113.

The fact that the building described might, by happenstance or design, be occupied in whole or in part by persons over 62 years of age[3] does not compel a different result, for it is the nature of the facility that is the determinative factor in answering the question of whether section 13143 or 13113 applies and not the coincidental age of its occupants. (*Cf.* 27 Ops. Cal. Atty. Gen. 59, 61 (1956).) Whatever the age of its occupants, a hotel or an apartment house simply is not a "home for the aged" or whatever other euphemism of more recent vintage might be employed to designate a facility where services and care are provided.[4]

There are many reasons that are not at all related to a desire to secure personal care or services why persons of any age, no less seniors, might seek to live in an environment surrounded by contemporaries—such as a desire to have companionship less encumbered by a generation gap, or a desire to share a common outlook with one's neighbors which similarity of age supposedly ensures. We are also informed that a senior's desire to live in a hotel or apartment surrounded by other seniors is often occasioned by his or her effort to maintain an individualized living arrangement rather than be institutionalized in the very "home for the aged setting" the question envisions. Assuredly too, many seniors might desire not to live in the proximity of children. But whatever the reason prompting the election, it is made on individual preference unrelated to considerations which attend a person's entering a "home for the aged." Furthermore, while economic circumstance might dictate whether a person lives in a hotel or an apartment, the essence of the arrangement is residential or a leasing of space, and not one of securing the provision of care. Again, a hotel or an apartment house is not a "home for [care of] the aged" as the term is commonly understood, and as it is used in sections 13143 and 13113,

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[3] The request focuses on the age of 62 or 65. We note that for some purposes, the concept of elderly has been defined as 55 years or age or older. (See e.g. § 1570.7, subd. (c) (as such for the California Adult Day Health Care Act (div. 2, ch. 2.5)); *cf*.. tit. 42 U.S.C.A. § 2809(a)(2): "'Senior Opportunities and Services' designed to identify and meet the needs of older, poor persons above the age of 60 . . .".)

[4] In this vein we note for example, that the California Community Care Facilities Act (div. 2, ch. 3, § 1500, *et seq*.) speaks of "residential facilities" and "residential care facilities" for the elderly. A "residential facility" is defined to mean "any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual" (§ 1 502, subd. (a)(1), and a "residential care facility for the elderly" is defined as "a group housing arrangement chosen voluntarily by residents who are over 62 years of age and who are provided varying levels of supportive services or care, as agreed upon at the time of admission, based upon their varying needs." (*Id*., subd. (a)(2).) In either case, the element of personal care is present as it is with the "home for the aged." With the simple hotel or apartment house it is not.

and many residents of the former would take umbrage at the very suggestion that in the eyes of the law their living arrangement was considered to be the latter.

For similar reasons, we do not transform an apartment or a hotel that simply provides services for which federal funds are available, into a "home for the aged." For example, a nutrition center (tit. 42 U.S.C.A. §§ 3045–3045(i)); *cf id*., § 2809(a)(1), a multipurpose senior center (*id*., §§ 3041–3042) or an all season recreation center (*id*., § 2809(a)(2)) might be sited on the premises with federal funds received under the Older Americans Act of 1965 as amended, and similar legislation. (See generally 42 U.S.C. §§ 2808, 2809 and 3001 *et seq*. and 63 Ops. Cal. Atty. Gen. 290, 290–292 (1980).) But while that may be a selling point to make the apartment house or hotel more attractive to a senior, his or her primary reason for renting or leasing the premises is to secure a place in which to dwell and the primary business purpose of the management is just that—i.e., the leasing of living space, and not the provision of health care and services which might be funded by the government. Further, the site for the provision of those federally funded programs can be anyplace—even a private dwelling, as long as it meets certain criteria relating to sanitation, access to members of the community, economics, and availability of space. But the presence of such a program on a site does not change its fundamental nature any more that the existence of a boutique in a hotel transforms the latter into a retail establishment. Where the primary purpose of the dwelling unit is residential and not a health facility to whatever degree, it is not a "home for the aged" despite the existence of a federally funded program for services for the elderly thereon.

We therefore conclude that a hotel or apartment house which by happenstance or design is inhabited by persons 62 years of age or older and which may offer services for which federal funds are available is neither a "home for the aged" as that term is used in section 13143 nor a "home or institution for the care of aged or senile persons" as that term is used in section 13113.

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