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OPINION	:	No. 81-1104
of	:	JANUARY 26, 1982
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THE HONORABLE EDWARD V. ROBERTS, DIRECTOR, DEPARTMENT OP REHABILITATION, has requested an opinion on the following question:

Is a recreation building in a mobile home park a "public accommodation or facility" within the meaning of Health and Safety Code section 19955 so as to be required to be accessible to and usable by physically handicapped persons?

CONCLUSION

Unless it is used by the general public, a recreation building in a mobile home park is not a "public accommodation or facility" within the meaning of Health and Safety Code section 19955 so as to be required to be accessible to and usable by physically handicapped persons.

ANALYSIS

Chapter 7 to division 5 of title 1 of the Government Code (§§ 4450-4458) is designed to "insure that all buildings, structures and related facilities constructed in this state by the use of [*public*] funds shall be accessible to and usable by the physically handicapped." (*Id.*, § 4450; see also fn. 2, *post*.) Complementing that, part 5.5 to division 13 of the Health and Safety Code (§§ 19955-19959) (hereinafter, "part 5.5"), the subject of our concern, is designed to insure that "public accommodations or facilities constructed in this state with private funds" be likewise so accessible and usable. (*Id.*, §§ 19955, 19956.)[1] We are asked whether a recreation building in a mobilehome park is a "public accommodation or facility" within the meaning of the latter statute. We conclude that a recreation building in a mobilehome park is not a "public accommodation or facility" within the meaning of section 19955 so as to be required to be accessible and usable by handicapped persons.

Part 5.5 was enacted in 1969 to address concern about the effect that the design and construction of *privately* constructed buildings had on the ability of handicapped persons to have access to and use them. (§ 19955; see also *Marsh* v. *Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881, 887-888.) The legislation seeks "to insure that *public accommodations or facilities constructed with private funds* adhere to the provisions of chapter 7 (commencing with § 4450) of division 5 of title 1 of the Government Code" (§ 19955) and requires "all public accommodations constructed in this state [to] conform to [those] provisions . . . ." (§ 19956.) As noted at the outset, the referenced provisions of the Government Code were enacted to insure that all buildings constructed with public funds would be accessible to and usable by physically handicapped persons.[2] For the purposes of part 5.5, the phrase "public accommodation or facility" is defined by section 19955 as follows:

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[1] Unidentified statutory references are to the Health and Safety Code.

[2] Chapter 7 of division of title 1 of the Government Code (Stats. 1968, ch. 261, p. 573, § 1) was enacted in 1968 to alleviate concern about the effect the design and construction of buildings, structures and related facilities constructed with public funds was having on the ability of handicapped persons to have access to and use of them. (*Marsh* v. *Edwards Theatres Circuit, Inc.*, *supra*, 64 Cal.App.3d at p. 887.) Section 4450 of the Government Code declares the Legislature's purpose to be "to insure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by the physically handicapped." The section mandates the State Architect to adopt and submit proposed building standards and to adopt other regulations for making buildings, structures and related facilities accessible to and usable by the physically handicapped. The regulations and standards so adopted are to be consistent with the Uniform Building Code as augmented as the State Architect, in consultation with the State Department of Rehabilitation, the League of California Cities, the County Supervisors Association

> "'[P]ublic accommodation or facilities' means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers." (§ 19955; emphasis added.)

We must therefore decide whether a recreation building of a mobilehome park fits the bill.

It is the fundamental principle of statutory construction that the primary and controlling consideration in the construction of a statute is the determination of and the giving effect to the legislative intent behind the enactment. (*Friends of Mammoth* v. *Board of Supervisors* (1972) 8 Cal.3d 247, 256; *Great Lakes Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal.3d 152, 163; *Select Base Materials* v. *Board of Equal.* (1959) 51 Cal.2d 64O, 645.) We look to the words of the statute itself (*Moyer* v. *Workmen's Comp. Appeals Board* (1973) 10 Cal.3d 222, 230; *Steilberg* v. *Lackner* (1977) 69 Cal.App.3d 780, 785; *People* v. *Knowles* (1950) 35 Cal.2d 175, 182) and construe them with the nature and purpose of the statute in mind (*West Pico Furniture Co.* v. *Pacific Finance Loans* (1970) 2 Cal.3d 594, 608; *Rich* v. *State Board of Optometry* (1965) 235 Cal.App.2d 591, 604). In this endeavor the legislative history of the statute is a legitimate aid in divining the Legislature's intentions. (*California Mfrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844, citing *Steilberg* v. *Lackner*, *supra*; *Alford* v. *Pierno* (1972) 27 Cal.App.3d 682, 688; see also *People* v. *Ventura Refining Co.* (1928) 204 Cal. 286, 291; *County of San Diego* v. *Milotz* (1955) 119 Cal.App.2d Supp. 871, 881.)

So directed, we do not believe the Legislature intended that a recreation building of a mobilehome park be considered a "public accommodation or facility" for the purposes of part 5.5, unless, of course, it *is* used by the general public. To be brought within the ambit of section 19955 a facility must be *public*. That notion pervades the section. Thus while the section's setting forth examples which the Legislature has specifically deemed to be included within its intended meaning of the term "public accommodation or facility" (i.e., "auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums and convention centers") might not limit or preclude other possibilities from being so considered (*People* v. *Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 639; *Koenig* v. *Johnson* (1945) 71 Cal.App.2d 739, 747-749; cf. *Estate of Banerjee* (1978) 21 Cal.3d 527, 538; 58 Ops.Cal.Atty.Gen. 512 (1975) (pedestrian overcrossing a "sidewalk" for purposes of Gov. Code, § 4451)), *still* to be a "public accommodation or facility" within

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of California and at least one private organization representing and comprised of physically handicapped persons, determines necessary to assure the buildings' accessibility and usability by the physically handicapped (*id.*, § 445O) but without their loss of function, space or facility where the general public is concerned. (§ 4452.) Responsibility for enforcement is vested in the Director of the Department of General Services or local governing bodies, as appropriate. (*Id.*, § 4453.)

the meaning of the section, by its unexemplary terms any other such possibility must be a "building, structure, facility, complex or improved area which is used by the general public." (§ 19955.) Furthermore, even in the examples which the Legislature has provided in section 19955, a common denominator of being public is found throughout, and to be included within the section any other type of accommodation or facility should have that characteristic as well. (*People* v. *Buese* (1963) 220 Cal.App.2d 802, 807; 64 Ops.Cal.Atty.Gen. 173, 177 (1981); *Fox* v. *Hale & Norcross S.M. Co.* (1895) 108 Cal. 369, 426.) We are therefore doubly reluctant to include the recreation building of a mobilehome park in the statutory scheme because, simply put, it does not fit: as we shall show, the recreation building Just does not have the characteristics and incidents of being public that section 19955 not only contemplates but specifically requires.

A mobilehome park has been defined as "any area or tract of land where two or more mobilehome lots[3] are rented or leased or held out for rent or lease to accommodate mobilehomes[4] used for human habitation." (§ 18214; cf. § 50541.) Unlike what its name implies, and especially in today's economy, a mobilehome park is *not* a facility for transitory use by the general public. (Compare §§ 18217 ("temporary trailer park" with occupancy for 11 days or less), 18220 ("travel trailer park" that is used by "recreational vehicles") and see also *Dean* v. *Ashling* (5th Cir. 1969) 409 F.2d 754, 756 (a trailer park is an "other establishment which provides lodging to *transient* guests" and is thus a "public accommodation" within the meaning of the Civil Rights Act of 1964, § 201[b)(1); 42 U.S.C.A. § 2000a(b)(1).) Its occupancy is more permanently rooted and more limited in availability and as such it is more akin to a subdivision where homes are leased or rented (or viewed vertically, an apartment complex) than it is to a hotel or motel or trailer park as has been suggested. In short, it does not have the incidents of use by the general public, nor does it expect to have the same to survive, as does an auditorium, a hospital, a theater, a restaurant, a hotel, a motel, a stadium, or a convention center.

But what of its recreation building? Undoubtedly that facility is open to a more general class than the residents of the park for surely it is available to their families and invited guests. Use by that expanded group of persons in our view however does not

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[3] The word "lot" has been defined as "any area or tract of land or portion of a mobilehome park . . . used for the occupancy of one mobilehome." (§ 18210.)

[4] A "mobilehome" is defined (for the purposes of the Mobilehome Parks Act (div. 13, pt. 2.1)) as "a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units [i.e., one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating, and sanitation (§ 18005.5)] to be used with or without a foundation system." (§ 18211; cf. § 18008; Veh. Code, § 396.) It does not include a recreational vehicle, commercial coach or certain "factory-built housing." (§ 18211; cf. § 19971.)

reach the use "by the general public" spoken of in section 19955. There are still *meaningful restrictions* on who may use the facilities, which considerably narrows their amenability to user from being generally available to the general public—as is the case with an auditorium, hospital, theater, restaurant, hotel, motel, stadium or convention center--to being available to a select and definable few. Furthermore, unlike those facilities, the purpose for whose creation is based upon their being made continuously available to the general public and whose economic viability cannot survive without their being so available, the recreation center at a mobilehome park is neither so created nor dependent. Rather, it is a secondary appendage to another unit, the park itself, which like it neither contemplates nor needs accessibility of continuous use by the general public for its sustenance. Thus we do not believe the fact that a recreation building in a mobilehome park might well be used by the residents' families, friends and invited guests makes it "a building . . . or facility used by the general public" or a "public facility or accommodation" within the meaning of section 19555.

We therefore are apt to conclude that unless a recreation building of a mobilehome park is used by the general public it is not a "public accommodation or facility" within the meaning of section 19955 of the Health and Safety Code so as to be required to be accessible to and usable by physically handicapped persons.

It has been suggested however that we must not construe section 19955 *in vacuuo*, that we must read it in connection with the other sections of part 5.5, and that if the recreation building of the mobilehome park cannot be brought into part through the front door of section 19955's "public accommodation or facility" or through one of its front windows such as its being in effect a hotel, a motel, an auditorium or a convention center, then at least we might bring it into part 5.5 through one of the back doors or windows of one of the other sections. In this regard we are invited to examine (1) section 19955.5's requirement that "office buildings" constructed in this state conform to the salient provisions of the Government Code requiring access and user for the physically handicapped, together with its definition of an office building as "a structure wherein *commercial activity* is performed or a profession is practiced, or wherein any combination thereof is performed or practiced in all or the majority of such building or structure,"[5] and

[5] Section 19955.5 provides.

"All passenger vehicle service stations, shopping centers, offices of physicians and surgeons, and *office buildings* constructed in this state with private funds shall adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code. As used in this section, 'office building' means a structure wherein commercial activity or service is performed or a profession is practiced, or wherein any combination thereof is performed or practiced in all or the majority of such building or structure."

(2) an earlier opinion of this office wherein we noted that the term "business establishment" as used in the Unruh Civil Rights Act (Civ. Code, § 51) has been broadly construed to encompass those engaged in the rental of real property and those engaged in developing, building and selling tracts of houses. (See 59 Ops.Cal.Atty.Gen. 223, 224 (1976).) Considering the suggestion, we reject it.

It simply does not follow from the proposition that the renting or leasing of mobilehome lots in a mobilehome park constitutes a commercial activity within the meaning of section 19955.5, that *all* of the structures and facilities in the park are part of that commercial activity and therefore "office buildings" subject to the access-and-use-by-handicapped-persons provisions of the Government Code. The main office of the park might be considered engaging in a commercial activity, but surely the individual mobilehomes cannot be so considered, nor do we believe the recreation building itself. While that building may be a selling point, and while it may house certain conveniences such as vending machines and laundry facilities, still, as we have seen, it is but a secondary adjunct or consideration to the primary purpose of the park: the leasing of space (lots) for mobilehomes. And although a recreation building may contain conveniences which may generate some profit, that is but secondary to the purpose of the recreation building itself (recreation), and is thus yet another step removed from the primary purpose of the park which we accept as being a commercial endeavor. Thus while the office of the mobilehome park would be covered by section since commercial activity is performed within it, that does not extend to the park's recreation building and it would not be covered by the section's mandate.

Returning to section 19955, we are confronted and circumscribed by the definitional language and examples contained therein which we can neither add to (*Vallerga* v. *Dept. of Alcoholic Bev. Control* (1959) 53 Cal.2d 313, 318) nor rewrite (*Rowan* v. *City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314) to make as Macbeth "the green one red." Faced as we are with that language, we conclude that unless a recreation building in a mobilehome park is actually used by the general public it is not a accommodation or facility" within the meaning of section 19955 so as to be required to be accessible to and usable by physically handicapped persons.

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