



STATE OF FLORIDA

DEPARTMENT OF BUSINESS REGULATION
THE JOHNS BUILDING
725 SOUTH BRONOUGH STREET
TALLAHASSEE, FLORIDA 32301

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DIVISION OF HOTELS
AND RESTAURANTS

Bob Graham, Governor
R. B. Burroughs, Jr., Secretary

February 21, 1980

Mr. Anthony Ninos, Director
Division of Hotels and Restaurants
The Johns Building
725 South Bronough Street
Tallahassee, Florida 32301

REFER TO: Opinion No. 80-7

Re: Section 399.035(1), Florida Statutes Minimum
Passenger Elevator Requirements for the Handi-
capped after October 1, 1978.

Dear Mr. Ninos:

You have requested our opinion on substantially the follow-
ing question:

If a building permit has been issued prior to October 1, 1978, for construction of a building or a building complex containing multiple structures and such structures will include passenger elevators, must the elevators be made accessible to the physically handicapped in accordance with the provisions of Section 399.035(1), Florida Statutes?

Your question is answered as set out in the discussion below.

Section 399.035(1), Florida Statutes requires that "Passenger elevators in buildings on which construction is begun after October 1, 1978 shall be made accessible to the physically handicapped persons in accordance with the standard 'suggested minimum passenger elevator requirements for the handicapped' of the National Elevator Industry, Inc..."

It is a well established principle in Florida that a license or permit is not property in a constitutional sense and such license or permit in and of itself confers no specific right or vested interest. In this light the mere possession of a building

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Division of General Regulation

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Division of Florida Land Sales & Condominiums
Bureau of Elevator Inspection

Division of Pari-Mutuel Wagering
1350 N.W. 12th Avenue, Room 510
Miami, Florida 33136

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permit issued prior to October 1, 1978 would not represent a right or interest that could not be affected at a later date by an act of legitimate police power legislation. Davidson v. City of Coral Gables, 119 So.2nd704 (3rd DCA, 1960).

The generally accepted meaning of the word "construction" has been stated as the building or erecting of something which did not exist previously. Larson v. Crescent Planing Mill Co., 218 S.W. 2d 819.820. This meaning is supported by the definition found in Blacks Law Dictionary which defines "construct" as to build, erect, put together or make ready for use.

Since the instant statute requires its application to those buildings on which construction is begun after the effective date of October 1, 1978 the determining factor in the statute's application will be whether or not the actual building or erecting process has been commenced under the specific permit. The mere possession of a building permit cannot be viewed as an actual step in the construction process.

This view is supported by a line of cases that deal with the construction of gas stations where subsequent zoning actions have attempted to revoke the previous valid building permits. These cases all hold that where the permittee has in good faith incurred expenses or obligations in connection with actual construction or has proceeded with actual construction in reliance on the permit any subsequent attempt to revoke or limit the permittee's permit will be invalid. However, where the permittee has not acted in such a way his rights under the permit may be altered or affected by subsequent governmental action. 75 ALR 2d242.

Following the above guidelines, it appears that the statute will require conformance of any building's elevator if physical construction of that particular building was started after October 1, 1978 even though included under a permit issued prior to October 1, 1978. However, if the holder of the permit has relied upon the building permit to his or a third party's detriment by entering into a valid contract for that particular's building's construction prior to October 1, 1978 then there may be a constitutional prohibition beyond the power of the executive branch to resolve, against forcing a conformance of the building's elevator(s) with the requirements of Florida Statutes 399.035(1).

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SUMMARY

The key terms governing the application of Section 399.035(1), Florida Statutes are "construction" and "building". The mere issuance of a permit prior to October 1, 1978 for a multiple structure complex is not in and of itself sufficient to exempt any building upon which actual construction had not begun prior to October 1, 1978. This interpretation, however, may give rise in certain instances to constitutional impairment of contract problems as to existing contractual rights entered into upon reliance of the building permit. The resolution of any such problems are, however, given the clarity of the legislative enactment, beyond the power of the executive branch to resolve.

Sincerely,

JAMES N. WATSON, JR.
Staff Attorney


HAROLD F.X. PURNELL
General Counsel

JNWjr/HP:bb