

Legal Opinion: GCH-0084

Index: 2.200

Subject: Title II of Americans with Disabilities Act

May 4, 1993

MEMORANDUM FOR: Michael B. Janis, General Deputy Assistant
Secretary for Public and Indian Housing, PD

FROM: Robert S. Kenison, Associate General Counsel
Office of Assisted Housing and Community Development, GC

SUBJECT: Title II of the Americans with Disabilities Act of 1990
Applicability to Public Housing

This addresses the legal issues pertinent to your consideration of the applicability of Title II of the Americans with Disabilities Act of 1990 (ADA) to low income public housing assisted under the United States Housing Act. The central issue to be resolved is whether a public housing agency is a "public entity" as defined in section 201 of the ADA. If a public housing agency is such a "public entity," the provision of housing would clearly be within the scope of "services, programs or activities" of the entity.

Section 201 of the ADA defines a "public entity" to include "(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government." Title III of the ADA which is applicable to public accommodations and services operated by private entities defines a "private entity" as "any entity other than a public entity (as defined in section 201(1))." In a statutory universe consisting of public and private entities, public housing agencies clearly are public entities.

As public housing agencies are for the most part separate Federally funded legal entities as to which the local government has very limited functions, they are not generally considered to be a department, agency or instrumentality of the local government. However, both the statutory dichotomy described above and the legislative history of the ADA support the position that a public housing agency is a "public entity" within the coverage of Title II of the ADA, and that these provisions were intended to be applicable to public entities generally without regard to their specific relationship to a State or local government.

House Report No. 101-485, at page 84, states that the first purpose of Title II of the ADA is to "make applicable the prohibition against discrimination on the basis of disability, currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973, to all programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, regardless of whether or not such entities receive Federal financial assistance." Senate Report No. 101-116, at page 44, states that "Section 202 of the legislation extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to

cover all State and local governmental entities."

We have therefore concluded that low income public housing is covered by Title II of the ADA. We understand that the Department of Justice is taking an expansive view of the scope of Title II, and has informally advised that public housing is covered by Title II. From the programmatic standpoint, the fact that the public housing program is subject to a multiplicity of overlapping statutory and regulatory requirements under the Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act of 1990, may make it difficult for the public housing agencies to understand and reconcile these requirements. You may wish to address this problem in dealing with program instructions concerning these requirements.