



Office of the Attorney General
State of Texas

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December 22, 1994

Mr. Jack W. Garison
Executive Director
Texas Department
of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Letter Opinion No. 94-096

Re: Whether section 754.014 of the Health and Safety Code authorizes the Texas Department of Licensing and Regulation to adopt standards regulating an elevator that only employees or service contractors use and related questions (ID# 28648)

Dear Mr. Garison:

On behalf of the Texas Department of Licensing and Regulation (the "department"), you have asked us to construe section 754.014(a) of the Health and Safety Code. Prior to 1993, chapter 754 of the Health and Safety Code pertained only to passenger elevators. The chapter required all passenger elevators to be equipped with a safety device that prevented the elevator's movement when the elevator door was open, Health & Safety Code § 754.001(a); required the Workers' Compensation Commission to approve each drawing, model, or design of such an elevator safety device, *id.* § 754.002(a); and provided a criminal penalty for owners, lessors, or managers of buildings in which a passenger elevator was not equipped with an elevator safety device, *id.* § 754.003(a).

In 1993 the legislature amended chapter 754 so that it now applies to "escalators[] and related equipment," as well as to elevators. *See* Acts 1993, 73d Leg., ch. 65, § 1, at 149, 149-50. The legislature also added subchapter B to chapter 754, providing for the inspection and certification of elevators, escalators, and related equipment.¹ *See id.* § 3, at 150-52. Among other things, subchapter B provides, in section 754.014(a), that the commissioner of licensing and regulation, *see* Health & Safety Code § 754.011(2) (defining "commissioner"),

shall adopt standards for the installation, alteration, and operation of elevators, escalators, and related equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

¹Section 754.011(3) of the Health and Safety Code defines "related equipment" as "automatic equipment that is used to move a person in a manner that is similar to that of an elevator or escalator and includes a dumbwaiter, manlift, and moving sidewalk." *But see infra* note 4 (discussing inclusion of dumbwaiter).

(2) buildings that contain an elevator, an escalator, or related equipment that the public is generally invited to use, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

Id. § 754.014.

You ask us to determine whether an elevator² “used by the public,” *see id.* § 754.014(a), includes an elevator used exclusively by employees or service contractors. You also ask whether an elevator in a factory or plant that controls access to the elevator is an elevator “that the public is generally invited to use,” *see id.* § 754.014(a)(2). You finally ask us to define “other commercial establishment” for purposes of section 754.014(a)(2). You ask no questions about subsection (a)(1).

As we have suggested, prior to the 1993 enactment of chapter 754, subchapter B, the law did not provide for the inspection and certification of elevators. *See* House Comm. on Licensing and Administrative Procedures, Bill Analysis, C.S.H.B. 154, 73d Leg. (1993). The authors thus proposed this bill “for the purpose of developing standards regarding installation, operation, and inspection of elevators and related devices.” *Id.*

In testimony before the House Committee on Licensing and Administrative Procedures, a witness described the bill as a safety bill for “vertical transportation.” Hearings on H.B. 154 Before the House Committee on Licensing and Administrative Procedures, 73d Leg. (Feb. 22, 1993) (tape available from the House Video/Audio Services Office) (testimony of Tommy Smith, International Union of Elevator Constructors Local #133). In response to a question about whether the bill encompassed storage and freight elevators, a second witness stated that the “bill covers every type of elevator or conveyance [that] handles people.” *Id.* (testimony of Robert Hawkins, elevator inspector). Finally, a third witness testified that the bill would cover “virtually every elevator in the state.” *Id.* (testimony of Larry Niemann, Texas Building Owners and Managers Association). Mr. Niemann further noted that several groups, including elevator manufacturers and labor and construction unions, all were in favor of the bill. *Id.*

When construing a statute, we may consider among other matters the object the legislature sought to attain and the legislative history of the provision. Gov’t Code § 311.023(1), (3). We are to construe words and phrases used in a statute in context and in accordance with rules of common usage unless the word or phrase has acquired a particular meaning by legislative definition or otherwise. *Id.* § 311.011. Finally, we are to interpret a remedial statute liberally, in an effort to effect the legislative purpose. *See* 67 TEX. JUR. 3D *Statutes* § 161, at 800-01 (1989) (and sources cited therein).

²For the sake of brevity, throughout this letter we will use the term “elevator” to indicate “elevator, escalator, and related equipment.”

The meanings of the terms about which you ask are facially unclear. We are aware of no statute that defines, for purposes of chapter 754, the terms about which you ask. Furthermore, we believe that “the public” and “commercial establishment” can be interpreted in a variety of ways. The word “public” can describe, for example, the people as a whole, a specific group of people, or the government. See WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 952 (1990) (defining “public”). Likewise, as this office determined in Letter Opinion No. 90-16 (1990) at 2, the term “commercial establishment” may have a broad or narrow meaning depending upon the context in which it is used. In a narrow sense, the term denotes an enterprise devoted to the purchase and sale or exchange of goods and commodities; in a broad sense, the term indicates an enterprise involved in any “phase of commercial and business activity and intercourse.” Letter Opinion No. 90-16, at 2-3 (quoting *Jordan v. Tashiro*, 278 U.S. 123 (1928)).

We believe that we must construe section 754.014(a) liberally, consistent with the legislature’s remedial purpose for enacting this provision, *i.e.*, to mandate the development of standards regarding elevator installation, operation, and inspection. See House Comm. on Licensing and Administrative Procedures, Bill Analysis, C.S.H.B. 154, 73d Leg. (1993). Moreover, we believe that the legislature understood the bill proposing to add section 754.014 to the Health and Safety Code to apply to all elevators designed to carry individuals that were installed or operating in any building except a private home.³ We note, for example, that the legislature listed in subsection (a)(2) a broad range of commercial establishments: “hotel, motel, apartment house, boardinghouse, church, office building, shopping center” We therefore construe section 754.014 to require the commissioner of licensing and regulation to promulgate standards for the installation, alteration, and operation of all elevators designed to carry individuals in any building other than a private home. Section 754.014 does not pertain to elevators that carry freight exclusively,⁴ for example, nor does it pertain to an elevator that is installed in a private home of two or more floors.

Specifically, we believe that “used by the public” in section 754.014(a) refers to usage by any and all individuals. We construe “that the public is generally invited to use”

³In using the term “private home,” we distinguish between such a residence and an apartment house or boardinghouse, which section 754.014(a)(2) expressly includes in the list of buildings that are commercial establishments.

⁴Often, an elevator denominated a “freight elevator” carries individuals as well as freight. To the extent that such an elevator is used to transport individuals, it is an elevator subject to regulation by the department.

In this regard, we note that section 754.011(3) of the Health and Safety Code defines “related equipment” (as in “elevators, escalators, and related equipment,” see Health & Safety Code § 754.013) to include a dumbwaiter. We do not understand dumbwaiters to transport individuals, and we therefore believe that its inclusion in a list of kinds of “automatic equipment that is used to move a person” is anomalous. To the extent that dumbwaiters may transport individuals, however, they are subject to regulation by the department.

in section 754.014(a)(2) to modify "elevator, escalator, or related equipment," not "buildings"; furthermore, we once again construe "the public" to include any and all individuals. Finally, we construe "commercial establishment" to mean any building that is not a private home.

S U M M A R Y

Section 754.014(a)(2) of the Health and Safety Code, which requires the commissioner of licensing and regulation to adopt standards for the installation, alteration, and operation of elevators, escalators, and related equipment, pertains to all elevators, escalators, and related equipment designed to carry any and all individuals in any building other than a private home.

Yours very truly,



Kimberly K. Oltrogge
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Opinion Committee