

Inquiries Regarding Local Zoning Restrictions

Legal Opinion: GME-0001

Index: 9.250

Subject: Inquiries Regarding Local Zoning Restrictions

October 18, 1991

Honorable Bob Stump  
House of Representatives  
Washington, DC 20515

Dear Mr. Stump:

This responds to your September 20, 1991 letter regarding Mr. Dennis R. Pickering's inquiries regarding local zoning restrictions.

Mr. Pickering filed a complaint with the United States Department of Housing and Urban Development (HUD) on July 13, 1991. Ms. LaVera Gillespie, Director, Office of Fair Housing and Equal Opportunity, Region IX, has stated that Mr. Pickering's case, No. 099117851, was opened on July 31, 1991, and is under active investigation by her staff. If you have further questions regarding the status of this case, please contact Ms. Gillespie at Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102-3448. Ms. Gillespie's telephone number is (415) 556-6826.

The Fair Housing Act prohibits discrimination against individuals with handicaps. 42 U.S.C. 3604-3606. This prohibition was added by the Fair Housing Amendments Act of 1988 (the Act). The House Report on the Act stated:

. . .While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. . .by such means as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.

The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. H.R. Rep. No. 100-711, 100th Cong., 2d Sess. 24 (1988).

Accordingly, HUD has stated that, as a general matter, the

prohibitions against discrimination because of handicap are intended to apply to zoning decisions and practices. See 24 C.F.R. Ch. I, Subch. A, App. I at 705 (1991).

2

However, the Department cannot comment on the legality of the specific zoning ordinance described by Mr. Pickering for two reasons. First, when a complaint challenging a local ordinance is filed with HUD, the appropriate Regional Office of Fair Housing and Equal Opportunity conducts an investigation into the facts necessary to analyze the legality of the ordinance as applied to the complainant. Because the investigation of Mr. Pickering's complaint has not been completed, the Department does not have all relevant facts before it and a legal analysis would be premature. Second, the Department of Justice has ultimate responsibility for issues involving the legality of any State or local zoning or other land-use law or ordinance under the Fair Housing Act. See 42 U.S.C. 3610(g)(2)(C). The Secretary of HUD does not have the power to issue a charge of discrimination in such a case, but must investigate the complaint and then forward the case to the Department of Justice. See 42 U.S.C. 3610(a)(1)(B)(iv) and 3610(g)(2)(C). Accordingly, the Department has forwarded a copy of your letter and the enclosures to Mr. Paul F. Hancock, Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, P.O. Box 65998, Washington, DC 20035-5998.

Very sincerely yours,

Ivan A. Ransopher  
Assistant Secretary (Acting)

cc:  
Paul F. Hancock  
LaVera Gillespie