

(Art V). In view of these characteristics, you are hereby advised that the MCIA is not to be considered a state agency.

Turning to your second question, intervention in lawsuits by the state, through the Department of the Attorney General, is permissible where necessary to protect a right or interest of the state, or of the people of the state. 1919 PA 232, MCLA 14.101; MSA 3.211 states in part:

"The attorney general of the state is hereby authorized and empowered to intervene in any action heretofore or hereafter commenced in any court of the state whenever such intervention is necessary in order to protect any right or interest of the state, or of the people of the state . . ."

You have informed me that the MCIA is interested in the intervention question because they must make a decision on the necessity of obtaining errors and omissions insurance. Kindly be advised that the decision on whether to intervene rests with the Attorney General. Thus, a decision by MCIA on errors and omissions insurance should not assume intervention on the part of the state.

FRANK J. KELLEY,
Attorney General.

760621.1

STATE CONSTRUCTION CODE: Schools and School Districts

SCHOOLS AND SCHOOL DISTRICTS: State Construction Code

BARRIER FREE DESIGN: Schools and School Districts

The barrier free design rules contained in the State Construction Code do apply to the construction of public and nonpublic school buildings through the provisions of 1966 PA 1.

Opinion No. 4914-A

June 21, 1976.

Honorable Jelt Sietsema
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on a question which may be stated as follows:

Do the barrier free design requirements of the State Construction Code apply to the construction of public and nonpublic school buildings?

1966 PA 1, as last amended by 1975 PA 177; MCLA 125.1351 *et seq*; MSA 3.447(121) *et seq*, provides, in its title, as follows:

"An Act to provide for the accessibility and the utilization by the physically limited persons of public facilities and facilities used by the public; to create a barrier free design board and to prescribe its powers and duties; to prescribe the powers and duties of certain other state and

local authorities; to provide remedies; and to provide for the enforcement of this act."

The rules implementing this act are contained in the State Construction Code promulgated under the State Construction Code Act, 1972 PA 230; MCLA 125.1501 *et seq*; MSA 5.2949(1) *et seq*. These rules are incorporated into the barrier free design act, by 1966 PA 1, § 2, *supra*, which provides:

"(1) A public facility or facility used by the public . . . shall meet the barrier free design requirements contained in the state construction code." (emphasis added)

MCLA 125.1352(1); MSA 3.447(122)(1)

The barrier free design act, by definition, includes school buildings as demonstrated in certain subsections of 1966 PA 1, § 1, *supra*:

"(d) 'Facility used by the public' means a building, structure, or improved area utilized for purposes of education

* * *

"(g) 'Public facility' means a building, structure or improved area utilized for purposes of education" (emphasis added)

MCLA 125.1351; MSA 3.447(121)

Furthermore, 1966 PA 1, § 3(2), *supra*, provides:

"The administration and enforcement of this act in respect to school buildings as defined in section 1a of Act No. 306 of the Public Acts of 1937, as amended, being section 388.851a of the Michigan Compiled Laws, are vested in the department of education."

MCLA 125.1353(2); MSA 3.447(123)(2)*

It is clear from the terms used that the legislature intended to include both public and nonpublic school buildings within the coverage of this act. Further, responsibility for enforcement of the statute, with regard to school buildings, is reposed in the Department of Education.

1972 PA 230, *supra*, does not, by its terms, apply to the construction of public and nonpublic school buildings. OAG, 1976, No 4914 (January 13, 1976.) However, the barrier free design rules contained in the State Construction Code promulgated under 1972 PA 230, *supra*, do apply to the construction of public and nonpublic schools as provided in 1966 PA 1, *supra*.

It is therefore my opinion that the barrier free design requirements of the State Construction Code do apply to the construction of public and nonpublic school buildings.

FRANK J. KELLEY,
Attorney General.

* 1937 PA 306, § 1a; MCLA 388.851a; MSA 15.1961(1) defines "school buildings" as follows:

"(a) 'School buildings' shall include all buildings used for school purposes." Thus, "school buildings" includes both public and nonpublic school buildings.