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A SYMPOSIUM

THE RIGHTS OF THE HANDICAPPED: FEDERAL NONDISCRIMINATION REQUIREMENTS UNDER THE REHABILITATION ACT OF 1973

PREFACE

Recent legislative recognition of the problems encountered by handicapped people has prompted a public awakening to the needs and desires of all people to live in an integrated society with an opportunity to participate and contribute to the full extent of their potential. Section 504 of the Rehabilitation Act of 1973, and regulations promulgated thereunder, have been touted as being to handicapped persons what the Civil Rights Acts were to racial and minority groups, although this analogy is questionable.

Section 504 requires that any program or activity which receives federal funds may not exclude any handicapped person if he is otherwise qualified to participate. When one realizes the many barriers, both physical and attitudinal, which our society has imposed in the past, the far-reaching impact of this broad mandate becomes evident. As a result, compliance with the federal requirements may become a formidable task.

The following comments address three important aspects of section 504 and related federal legislation concerning the handicapped. First, the meaning of "handicap" is examined. The regulation seems to have been formulated so flexibly that protection may be extended to individuals not originally contemplated. While the first part of the definition may easily be read to exclude such persons as the aged, the poor, or homosexuals, the last clause broadens the scope to include anyone who is regarded as having an impairment which limits a major life activity. The Justice Department has determined that drug addicts and alcoholics are clearly within the meaning of the term. This flexibility has permitted estimates of the number of handicapped persons to range from ten to seventy million people. Broad interpretations may also be given to the term "recipient," which describes those persons subject to the requirements of the Act.

Section 504 also prohibits employment discrimination by any recipient of federal assistance on the basis of a person's handicap. The second comment addresses the problems which are manifest in the implementation of the regulations under the Act requiring em-

ployers to reasonably accommodate the job to the particular needs of the handicapped. As the number of qualified handicapped persons, the cost of adaptation and the degree of affirmative action an employer must make are not specifically determinable, the cost of implementation cannot be readily ascertained. HEW has estimated the cost of implementing all the regulations to be \$2.4 billion each year.

It is questionable whether Congress realized the impact that section 504 will have on society. The Act is characteristically vague and lacks specific examples. For instance, employers need not adapt working facilities if it would impose undue hardship, yet the Act does not define what might be considered "undue." The Act as originally proposed confined itself to the habilitative needs of veterans, but was amended to include all physically and developmentally handicapped people. Now, while the Act protects alcoholics and drug addicts, it fails to provide whether discrimination may be based upon a person's behavior resulting from the "impairment."

The application of the Act is as broad as its definitions. In addition to rehabilitation and employability of the handicapped, section 504 and other federal legislation assures that all people have access to any program or facility which receives federal assistance. This necessarily entails the removal of physical barriers to both architectural and transportation facilities. The third comment examines the requirements, application and remedies of this legislation and how each act relates to the others. Primarily, three acts have dramatic consequences to the handicapped—the Architectural Barriers Act (ABA), the Urban Mass Transportation Assistance Act (UMTA) and the Rehabilitation Act. Of particular interest are the various enforcement mechanisms which seek to insure compliance with architectural standards.

Standards which provide reasonable architectural accessibility to mobility-impaired people have been developed. Of course, these standards have no force and effect of their own. Neither the ABA nor the UMTA require that *existing* structures be made accessible. Section 504 requires that federally funded programs or activities be physically accessible, and therefore may require some architectural retrofitting, but it does not apply to federal buildings.

Compliance with architectural accessibility standards has been minimal. In response to the ineffectiveness of the ABA, Congress created the Architectural and Transportation Barriers Compliance Board (ATBCB) to study and recommend ways in which agencies may comply with the law and to enforce the ABA. However, the Board is not adequately staffed. Section 504 will be enforced by a procedure administered by the responsible funding agency. The

UMTA has no enforcement procedure. Thus, the effectiveness of each of these laws is doubtful.

It is encouraging, however, that regulations promulgated by HEW and DOT prescribe affirmative measures to promote compliance. Mandates in the fields of education and mass transportation are aggressive and serve to carry out the congressional intent that handicapped persons be granted equal rights to use public facilities with the same ease as everyone else. A judicial recognition of the requirements for post-secondary educational aids under section 504 is examined in a case note following the comments.

Despite these measures, it may be prudent to recognize that regulations are as subject to change as the collective mind of the public. In view of the tremendous costs involved in fully implementing section 504 and the public attitude which has excluded the handicapped in the past, it may be reasonable to anticipate some degree of backlash. If this should occur, the flexibility of section 504 may permit a more restrictive reading of the statute and revision of the regulations. While a barrier-free environment is the goal of those advocating the cause of handicapped persons, it cannot truthfully be said to be the end sought by Congress.

Perhaps the greatest failing of section 504 is that raised expectations of the handicapped may be frustrated. Presently, confusion exists about the jurisdiction of the ATBCB with respect to section 504 and the UMTA. New rules and regulations inevitably invite differing interpretations and attempts to skirt the stricter requirements of the law. As each agency promulgates its regulations, the true character of section 504, the "Civil Rights Act" for the handicapped, will be discerned.

