

**OPINION 92-05**

**TO:** Phillip V. Bloom, Development Services Director  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** April 3, 1992  
**SUBJECT:** Handicapped Provisions

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**QUESTION:**

We have four different codes:

1. Americans with Disabilities Act
2. Federal Fair Housing Act
3. Title 34, Arizona Revised Statutes
4. Uniform Building Code.

Which is applied to plan reviews and inspections.

**OPINION:**

This opinion requires a discussion of the concept of "preemption". Basically, the Federal and State governments have the ability to declare that they will address a matter in the entirety and no other unit of government shall have the power to address this issue.

The federal government has this power under the supremacy clause of the U.S. Constitution. See, Article VI, U.S. Constitution. The supremacy clause allows the federal government to determine that they will address an issue and prevent all other lesser units of government from addressing the issue.

Therefore, it must be ascertained whether the Congress intended to "preempt" the State and cities when it passed the Americans with Disabilities Act (ADA) and the Federal Fair Housing Act.

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A review of Section 2(b) of the ADA indicates a congressional intent to establish clear standards on discrimination against disabled individuals and to have the federal government play a leading role in eliminating such discrimination.

It is the opinion of this office that the ADA preempts all state and local legislation which is less restrictive. Therefore, if the Uniform Building Code, local ordinance or state law is in conflict with the ADA, the ADA governs and the local ordinance or code should be amended.

Reviewing the Federal Fair Housing Act and the Arizona Fair Housing Act, A.R.S. §41-1491, et seq. indicates a clear intent to preempt local governments from regulating in this area. The state act was designed to implement the federal act and to place enforcement responsibility in the state. See, Chapter 181, §§1 and 7.

Therefore, it is the opinion of this office that the Federal Fair Housing Act and the Arizona Fair Housing Act preempts all local legislation which is less restrictive. Unless related to numbers of occupants or other reasonable health and safety restrictions, if a local code or the Uniform Building Code is in conflict with the Federal and Arizona Fair Housing Acts, the federal and state law govern.

In regards to Title 34, it is clear that Title 34, Arizona Revised Statutes is applicable to construction of all public buildings. Ariz. Atty. Gen. Op. 183-016, Schrey v. Allison Steel Mfg. Co., 75 Ariz. 282, 255 P.2d 604 (1953) The intent of this statute is to create a uniform system for all public projects.

Consequently, if Title 34 is in conflict with local codes and the Uniform Building Code on a public project, then the local code is preempted. Title 34 is not intended to apply to private projects, unless the statute specifically indicates such application. Generally on private projects, local codes and the Uniform Building Code will be applicable.

Should you have any questions, please do not hesitate to contact me.