STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 01-156

Admission of service dogs to places of public accommodation

QUESTION

Is Tenn. Code Ann. § 62-7-112 consistent with federal law regarding admission of service dogs to places of public accommodation?

OPINION

Yes.

ANALYSIS

The Federal Americans with Disabilities Act provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of any place of public accommodation,"[1] and provides that "discrimination includes...a failure to make reasonable modifications in policies, practices, or proceedings, when such modifications are necessary to afford such goods, services, facilities, privileges, advantage or accommodation to individuals with disabilities . . . ."[2] The implementing Federal regulations pertaining to modifications in policies, practices, or procedures include the following regulation pertaining to service animals:

> (c) *Service animals - (1) General.* Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
>
> (2) *Care or supervision of service animals.* Nothing in this part requires a public accommodation to supervise or care for a service animal.[3]

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[1] 42 U.S.C. § 12182(a)

[2] 42 U.S.C.§ 12182 (b)(2)(A)(ii).

[3] 28 CFR § 36.302(c)(2000).

The Federal regulations define "service animal" to mean as follows:

> *Service animal* means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including , but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.[4]

The Tennessee statute regarding guide dogs provides as follows:

> **62-7-112. Guide dogs to be admitted - Penalties.**
>
> (a) (1) (A) No proprietor, employee or other person in charge of any place of public accommodation, amusement or recreation, including, but not limited to, any inn, hotel, restaurant, eating house, barber shop, billiard parlor, store, public conveyance on land or water, theater, motion picture house, public educational institution or elevator, shall refuse to permit a **blind, physically disabled or hearing-impaired** person to enter such place or to make use of the accommodations therein provided, when such accommodations are available for the reason that such blind, physically disabled or hearing-impaired person is being led **or accompanied by** a dog guide; provided, that such dog guide, when led or accompanied by a blind person or physically disabled person, is wearing a harness and is held on a leash by the blind or physically disabled person, or when led or accompanied by a hearing-impaired person, is held on a leash by the hearing-impaired person; and provided further, that such blind or hearing-impaired person or physically disabled person shall first have presented for inspection credentials issued by an accredited school for training dog guides.
>
> . . . .
>
> (b) A violation of this section is a Class C misdemeanor.

(Emphasis added.)[5]

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[4] 28 CFR § 36.104 (2000).

[5]The provisions of subsection (a)(1)(B) of Tenn. Code Ann. § 62-7-112 are identical to the provisions of subsection (a)(1)(A), except that they apply to dogs-in-training and their trainers. Subsection (a)(2) of the Act provides that hearing impaired persons may apply at the Tennessee Council for the Hearing Impaired for credentials in lieu of credentials from an accredited school for training dogs.

The Tennessee act is consistent with the Federal regulations in that Tenn. Code Ann. §62-7-112 confers a benefit on any hearing-impaired or physically disabled individual, not just blind persons. Moreover, the Tennessee act applies not only to dogs who **lead** disabled individuals but also dogs who **accompany** disabled individuals. This language is sufficiently broad to encompass the service dogs who perform a variety of tasks for individuals with all types of physical disabilities.

The Tennessee act as quoted above provides that the dog that is to be admitted to places of public accommodation must wear a harness and a leash that is held by the disabled individual, and that the disabled person must present on request credentials for the dog from an accredited school for training dog guides.

Even though there are no equivalent requirements in the Federal act or regulations, these requirements in the Tennessee act are not inconsistent with Federal law. The Federal act only bars the "failure [of a place of public accommodation] to make **reasonable** modifications in policies, practices, or procedures" in order to provide disabled individuals full and equal enjoyment of the facility.[6]

A place of public accommodation has obvious reasons for a "no dogs" policy applicable to ordinary dogs that may be unruly or untrained. Requiring the display or presentation of training credentials as a condition for the dog's entry is therefore reasonable, and accordingly it is not inconsistent with Federal law

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[6] 42 U.S.C. §§ 12182 (a) and 12182(b)(2).

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