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BRUCE E. BABBITT
ATTORNEY GENERAL

September 2, 1977

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Mr. Q. Dale Hatch
Maricopa County Attorney
101 West Jefferson
Phoenix, Arizona 85003

Re: 77-173 (R77-207)

Dear Mr. Hatch:

We have reviewed your June 10, 1977 opinion to the Board of Education for School District No. 214 (Tolleson Union High School), and informally concur in your opinion. This informal concurrence has no precedential value; however, the following attorney generals' opinions support your conclusion: Atty.Gen. Op. Nos. 77-130, 74-23-C, 73-21-C, 70-8-C, 66-2-C and 61-18-C.

Thank you for forwarding your opinion to the Attorney General for review as required by A.R.S. § 15-122.A. If you have any questions, please call me.

Sincerely,

BRUCE E. BABBITT
Attorney General

DAVID RICH
Assistant Attorney General

DR:jrs

OFFICE OF THE MARICOPA COUNTY ATTORNEY
CHARLES F. HYDER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



June 10, 1977

Board of Education
School District No. 214
(Tolleson Union High School)
9419 West Van Buren
Tolleson, Arizona 85353

School Opinion No. 77-10

Dear Board Members:

This opinion is in response to your request for an opinion on the following question:

Can the Board of Education expend capital outlay or thirty cent levy funds to contract for the refinishing of damaged plaster areas and painting of school buildings interior and exterior when it is considered a major improvement, or improvement of grounds? The "price", for the specific work in question, varies from \$25,000.00 to \$50,000.00.

ANSWER:

See body of opinion.

DISCUSSION:

A.R.S. §15-445(B)(1) allows the governing board of a school district to use thirty cent levy money for improving school buildings and appurtenances. A.R.S. §15-1201 and 15-1201.01 allow expenditures of funds budgeted for capital outlay to be used only for capital outlay purposes. The format of the budget is prescribed by the State Superintendent of Public Instruction in conjunction with the Auditor General.

From the information furnished by the Tolleson Union High School District, it is my understanding that the Board of Education wants to award contracts for painting and replastering the high school buildings to be paid out of thirty cent levy money. The County School Superintendent is of the opinion that painting and replastering of a building is maintenance and can not be paid out of levy funds but must be paid out of other money. The main question is: Does painting and replastering a building improve a building or maintain the status quo?

Improving is defined by Webster in the New Collegiate Dictionary "to enhance in value of quality; make better; to increase the value of property by betterment; to use to good purpose; to make useful additions or amendments; to make more acceptable or bring nearer to some standard".

There are no cases in Arizona where the word improving is defined. There are cases in other jurisdictions which define "improve" and "improvements". Some of these cases are quoted below.

Where a lease provided that the lessee should have right to alter, repair and improve the premises as might be to his interest, the word "improve" meant to make better, so that the tenants might alter and make the premises better at their own will." Hastey v. Wheeler, 12 M.E. 434.

"Repair" within statute defining power to repair and improve school buildings, means to restore to certain state after decay or injury. "Improve" means to turn to good advantage, to better. DeAngelis v. Laino, 252 N.Y.S. 871.

The word "improvement" is generally used by accountants in its dictionary sense as meaning a betterment or addition, although the line of demarcation between improvement and replacement or between improvement and repairs is not always clear. Rosen v. Powers, 65 A.2d 200.

As affecting duties of life tenant and the like, "repairs" and "improvement" are not capable of exact definition, but "repairs" is applied to preservation of property in its original condition, while "improvements" is applied where permanent changes are made in enhancing value of premises. Zywiczynski v. Zywiczynski, 80 N.E.2d 807.

"Improvement" is defined by lexicographers as "that by which the value of anything is increased, its excellence enhanced, or the like", or an amelioration of the condition of property affected by the expenditure of labor and money, for the purpose of rendering of useful further purpose than those for which it is originally used or more useful for the same purposes." Stephens v. City of Port Huron, 113 N.W. 291.

An "improvement" is a valuable and useful addition, something more than a mere repair or restoration of the original condition. Midtown Chain Hotel Company v. Beveller, 49 S.E.2d 779.

"Improvement" includes any development whereunder work is done and money expended with reference to future benefit or enrichment of the premises. Eppes v. Eppes, 27 S.E.2d 164.

As can be seen from the citations quoted above, "improving" seems to mean "to better or enhance the value of the premises" while "maintenance" means "to restore to the status quo".

As noted in the above discussion, there is no clear answer to the question whether or not painting and replastering is an improvement or maintenance. Only by examining the type of work contemplated under the contracts can a decision be made. After reviewing the specifications with the Tolleson High School Business Manager and others it is my opinion that such a large painting and replastering job is more of an improvement than a repair and the contracts can be paid out of levy funds.

Very truly yours,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY

By Q. DALE HATCH
Q. DALE HATCH
DEPUTY COUNTY ATTORNEY

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