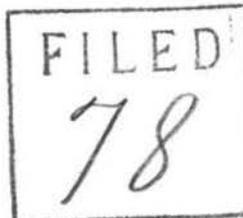


SCHOOLS: What constitutes erection of building so as to entitle district to state aid.

October 25, 1943.



Hon. Roy Scantlin,  
State Superintendent of Schools,  
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of September 3, 1943, as follows:

"This Department has received an application for state aid for a central high school building as provided in Section 10499, R. S. , 1939.

"The Board of Education of the Buffalo School District No. 1 of Dallas County, in its application for the high school building aid, has certified that it has erected a new building by reconstructing the central high school building which was greatly damaged by fire. Records in this office show that the central high school building of the Buffalo School District was destroyed in part by fire last January. The building which was burned in part was a modern structure and contained twelve classrooms with an auditorium and was erected a little more than two years ago. The fire burned the entire roof from the building, destroyed all the classroom section of the top floor, also other parts of the building were badly damaged from water and later by weather conditions on account of exposure while the roof was off the building. In general, the walls remained in a fairly satisfactory condition to be used again in rebuilding. However, many places in the walls had to be repaired and some sections relaid. The wiring of the building was destroyed and required replacing. This Department has examined the structure and found it to be now rebuilt and in first class condition. The total cost of rebuilding this structure as certified by the Board of Education was \$39,700.00. The Board of Education has in the application requested the state building aid of \$2000.00.

"Section 10499, R.S., 1939, in part, provides that town or consolidated school districts may qualify for the central high school building aid when the following conditions are met:

"1. Secure a school site of not less than five acres for the central high school building.

"2. Erect thereon in accordance with plans and specifications approved by the State Superintendent of Schools a building suitable for a central school, and containing one large central school, one large assembly and a modern heating and ventilating system.

"3. That that state shall pay one-fourth of said building and equipment cost, provided that the amount paid shall not exceed \$2000.00.

"The question arising in connection with this application for building aid is whether or not the school district may qualify for the state aid when the school building has been rebuilt as indicated, placing it again in first class condition.

"I shall appreciate your advice and official opinion in answer to the following question:

"Does the law as provided in Section 10499, R.S., 1939, permit the approval of state building aid for the rebuilding of a new and approved school building where the walls and part of the first floor remain intact and usable for the new structure, or would it require the erection of an entirely new and approved school building in order to qualify for the building aid?"

Section 10499, R. S. Mo. 1939, as amended in Laws 1941, p. 537, insofar as it applies to the instant question, provides that in order to be eligible for state aid the district must secure a five acre site and have

"\* \* erected thereon, \* \* \* a school building, suitable for a central high school and containing one large assembly room for the meeting of the citizens of the district and has installed a modern system of heating and ventilating."

We think the answer to your question turns on the meaning to be ascribed to the word "erected" as used in this statute.

In *Butz v. Murch Bros. Const. Co.*, 199 Mo. 279, it is said (l.c. 285):

"One of the primary definitions of the word 'erect' is to 'raise, as, a building; to build, to construct.'"

In the case of *In re Howett*, 10 Pa. 379, 380, it is said:

"In the common understanding and language of the people, when we speak of the erection or construction of a house or building, we mean the erection of a new house or building, and not the repairing of an old one."

In *Harrington v. Hopkins*, 288 Mo.1, the question was whether a tax voted for repairing and furnishing a school building was a tax for "erecting public buildings". On this the court said (l.c. 10):

"In no sense can the words 'furnishing' and 'repairing' be construed to mean the 'erection of public buildings as those words are used in the Constitution".

Again in *State v. Himmelberger-Harrison Lbr. Co.*, No. Sup., 58 S.W. (2d) 750, 753, the court discussed this same question, saying:

"It may be, though we are not called on to decide, that a distinct addition to a

building already erected might be covered by the term 'erecting buildings', but mere alterations, improvements, or repairs of existing buildings are not so included."

In Board of Com'rs of Guadalupe County v. State 94 P(2d) 515, (N.M.) the constitution permitted counties to borrow money to "erect necessary public buildings". The county issued bonds for the purpose of "remodeling the County Court House" and "building an addition thereto". The court held such invalid listing the following authority (l.c. 517):

"In 3 Words & Phrases, First Series, p. 2453, under the word 'erect' we find the following:

"'Where the structure of a building is so completely changed that in common parlance it may be properly called a new building or a rebuilding, the process of change is such an erection or construction of a building as to be within the meaning of that phrase as used in laws giving mechanics' liens. Smith v. Nelson (Pa.) 2 Phila. 113, 114.'

"'Erected", as used in a mechanic's lien law, giving a mechanic's lien on every building erected by mechanics, is not used strictly, and applied to the erection of new buildings, but includes, as well, a structure which was so completely changed in repairing that in common parlance it may be properly called a 'new building' or a 'rebuilding.' Thus, where every part of an old building is removed, except the back wall and part of the side walls, and the openings in them are changed, and the whole internal structure and external form of the buildings are changed, both as to its length and height, such a building is erected, within the meaning of the law. Armstrong v. Ware, 20 Pa. (8 Harris) 519, 520."

"Every change, alteration, or addition in or to an existing structure does not constitute an "erection or construction of a building," within the meaning of that phrase as used in laws giving mechanics' liens. The change or alteration must be such that the whole structure, as changed or altered, would commonly be regarded as another new and different building; and the addition of a back building to a main structure - as, for instance, a bathhouse and kitchen to a residence - is not an erection or construction of a building. Rand v. Mann (Pa.) 3 Phila. 429."

However, the court went on to say (l.c. 518):

"\* \* \* And yet it may be conceded that a building may be so greatly changed in structure, in the materials which enter into it, and in its internal arrangements, without at all losing its identity or ceasing to be the same building, and nevertheless be so entirely changed in plan, in structure, in dimensions, and in general appearance as to become, in a fair sense, and according to the common understanding of men, another building, a new building. On the other hand, it is every-day experience that buildings are remodeled more or less extensively and upon a contemplation of the changes, re-formation, re-shaping or recasting there would not be, according to the common understanding of men, the creation of another building, a new building.\* \* \*"

In School Dist. No. 6 v. Robb, 93 P (2d) 905 (Kan.) the statute permitted issuance of bonds to "erect" school-houses, while what was contemplated being done was to put on a new roof and install a heating plant. Plaintiff contended such was proper because a repair was included in the term "erection" since it was the lesser of the greater project.

The court ruled against this proposition, quoting a Missouri authority as follows (l.c. 906):

"In Parker-Washington Co. v. Meriwether, 172 Mo. App. 344, 158 S.W. 74, the question was whether certain street improvements were reconstruction or repavement or repair, and in discussing that it was said: 'In one sense, the term "reconstruction" and the term "repair" are so dissimilar as to render it difficult to make both terms applicable to the same work at the same time. In other words, ordinarily it is not easy to conceive of a thing being reconstructed and repaired at one and the same time. To "reconstruct" is to construct again, to rebuild, to form again or anew; while to "repair" is to restore to a sound state after decay, injury, dilapidation, or partial destruction; to mend. The only sense in which the two terms can be used together concerning a work is that, in those places where decay or dilapidation is so complete as to require a total reconstruction or forming anew, the work can be said to be "reconstructed", while at other points where the decay is only partial, the work is merely mended or repaired. \* \* \* When, however, the proceedings authorizing work to be done employ the words "reconstruct and repair" it should be held to be authorized under those sections which use those terms, and not under another and totally different section which contemplates either the creation or construction of the work as an original matter, or the total substitution of a new work in place of the old."

Then the court said (l.c. 907):

"We cannot agree with plaintiff's argument that the greater includes the lesser. As has been indicated, our statute authorizing issuance of bonds for erecting and equipping of schoolhouses has the schoolhouse for the unit. Were we to agree with the plaintiff,

to be consistent we would have to approve any bond issue the purpose of which was to replace any worn out or obsolete part of a school building - whether it was a new roof, a portion of a roof, a new floor, or a part of one, or some other part or portion of the building. The record here makes it clear that what it is proposed to do here is to put the school building in good condition by replacing or renewing parts of it - in other words, by repairing or replacing worn out or inadequate parts. We think that had it been intended by the legislature that a school district be authorized to issue bonds for such purpose, it would have used language clearly indicating that purpose.\* \* \*

In Tom v. Board of Com'rs of Lincoln County, 92 P (2d), 167 (N.M.) the same proposition was presented as was before the New Mexico court in the Guadalupe County case, supra, and the court followed its previous decision, but went on to say (l.c.169):

"We do not mean to hold that old public buildings cannot be remodeled with funds obtained from such bond issues, if the effect is to erect a new building. Indeed it has been held, and we hold, that the remodeling of an old public building into what is in effect a new one, is the erection of a public building within constitutional provision and statute."

From the above authorities it seems clear that when Section 10499 used the term "erected" it precludes repairs, but it is also equally clear that what constitutes "erection" of a building and what constitutes a "repair" of a building must be determined on the facts in each instance, since the repair or remodeling may be so extensive as to be actually an erection of a new building.

Turning to the facts which you present to us, it appears the roof and classroom section on the second floor were destroyed. Other parts of the building were damaged due to water and exposure, and the wiring was destroyed. However, the first floor was not destroyed and the walls remained in such condition as to be used in the repairs with some places having to be repaired and relaid. While these facts are rather scanty, it seems to us that the repair of this building cannot be considered to be the "erection" of a building within the meaning of Section 10499 so as to qualify the district for state aid.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney-General.

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