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STEVE CARTER
INDIANA ATTORNEY GENERAL

November 3, 2008

OFFICIAL OPINION 2008-05

Mr. Bruce A. Hartman, CPA
State Examiner
State Board of Accounts
302 W. Washington Street
Room E418
Indianapolis, IN 46204-2765

Re: Public Work Projects by School Corporations

Dear Mr. Hartman:

You have requested our opinion regarding the extent to which the public work laws apply to certain expenditures by school corporations. Although you posed several questions related to this matter, we understand the basic question to be whether the public work statute applies to roof repair/replacement projects undertaken by school corporations and whether school corporations participating in educational service centers are excepted from the public work statute.

Brief Answer

The public work statute at Indiana Code chapter 31-1-12 applies to roof repair/replacement projects undertaken by school corporations, including those schools participating in educational service centers.

Analysis

There are various statutory provisions governing public work projects. *See* Ind. Code §§ 36-1-12-1 to -21. Indiana Code sections 36-1-12-4, -4.7 and -5 set forth certain procedures that must be followed in awarding public work contracts, such as the requirements for competitive bidding. "The purpose of competitive bidding statutes is to safeguard the public against fraud, favoritism, graft, extravagance, improvidence and corruption and to insure honest competition for the best work or supplies at the lowest

reasonable cost.” *Town of New Ross v. Ferretti*, 815 N.E.2d 162, 169 (Ind. Ct. App. 2004). “Statutes that provide for free and open bidding on public works projects are designed to protect the rights of the public by ensuring that the process be competitive.” *Brooks v. Gariup Const. Co., Inc.*, 722 N.E.2d 834, 839 (Ind. Ct. App. 2000).

Unless specifically excepted, the public work statute applies to all public work performed or contracted for by a political subdivision. Ind. Code § 36-1-12-1(a). School corporations are political subdivisions for purposes of the public work statute. Ind. Code §§ 36-1-2-10, -13¹.

“Public work” is defined as

The construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

Ind. Code § 36-1-12-2.

Your question focuses on the meaning of the words “construction,” “reconstruction,” “alteration” and “renovation” as they are used in the statute to define a public work, and whether repairs are excluded from the definition. These words are not defined under chapter 36-1-12; therefore, in accordance with the rules of statutory interpretation, we look to the plain and usual meaning of these words in order to understand the legislature’s intent. Ind. Code § 1-1-4-1(1). The Merriam-Webster dictionary defines these words as follows:²

Construct: to make or form by combining or arranging parts or elements.³

Reconstruct: to construct again.⁴

Alter: to make different without changing into something else.⁵

¹ As an alternative to section 36-1-12-1, the governing body of a school corporation may participate in a utility efficiency program or may enter into a guaranteed savings contract under chapter 36-1-12.5. Ind. Code § 36-1-12-1(e). For purposes of this response we understand that your question does not concern a utility efficiency program or a guaranteed savings contract.

² See *Doe v. Donahue*, 829 N.E. 2d 99, 107 (Ind. Ct. App. 2005) (noting that English language dictionaries may be used when determining the plain and ordinary meaning of a statutory term).

³ Merriam-Webster Online Dictionary. 2008. Merriam-Webster Online. 3 June 2008 <http://www.merriam-webster.com/dictionary/construct>.

⁴ Merriam-Webster Online Dictionary. 2008. Merriam-Webster Online. 3 June 2008 <http://www.merriam-webster.com/dictionary/reconstruct>.

⁵ Merriam-Webster Online Dictionary. 2008. Merriam-Webster Online. 3 June 2008 <http://www.merriam-webster.com/dictionary/alter>.

*Renovate: to restore to a former better state (as by cleaning, repairing, or rebuilding).*⁶

Prior to a statutory amendment in 1987, “public work” was defined in section 36-1-12-2 as “the construction, alteration, or repair of a public building” Public Law 337-1987 amended the definition of “public work” by removing the word “repair” and adding the words “reconstruction” and “renovation.” The dictionary definition of “repair” is “to restore by replacing a part or putting together what is torn or broken.”⁷ Although the specific word “repair” was deleted from the definition, it was replaced by the word “renovation” which, by its ordinary meaning as noted above, includes repairs. It does not appear that the legislature intended to exclude repairs from public works; rather, it appears that repairs are included along with other projects that come under the broader definition of a renovation.

It is noted that section 36-1-12-3, which deals with a political subdivision using its own workforce to perform public work, refers to the “construction, maintenance, and **repair** applicable to the work.” Ind. Code § 36-1-12-3(a) (emphasis added). By using the term “repair” to describe public work projects in this section of the statute, it does not appear that the legislature intended that repairs be excluded from the definition of public work projects. In addition, the language used in Indiana Code article 5-16 in reference to wage and antidiscrimination provisions required in public work contracts does not indicate an intent to exclude repairs from public work projects. Section 5-16-6-1 requires that every contract for construction, alteration, or **repair** of any public building or public work contain antidiscrimination provisions. The wage scale statute defines “public work” to include “any public building, highway, street, alley, bridge, sewer, drain, improvement, or any other **work of any nature or character whatsoever** which is paid for out of public funds” Ind. Code § 5-16-7-4(4) (emphasis added).

When the meaning of a statute is at issue, the rules or maxims of statutory construction are useful in ascertaining and giving effect to the intent of the legislature. *State v. Kokomo Tube Co.*, 426 N.E.2d 1338, 1345 (Ind. Ct. App. 1981). A fundamental principle of statutory construction is to construe the statute in accordance with the purpose of the statute and the statutory scheme of which it is a part. *B.K.C. v. State of Ind.*, 781 N.E.2d 1157, 1167 (Ind. Ct. App. 2003). The words of a single section of a statute must be construed with due regard for all other sections of the statute and with regard for the legislative intent to carry out the spirit and purpose of the statute. *Id.* “The legislative intent as ascertained from the whole prevails over the strict, literal meaning of any word or term used therein.” *Id.* To that effect, the purpose of the public work statute and its bidding requirements is to protect the public by ensuring that the process is

⁶ Merriam-Webster Online Dictionary. 2008. Merriam-Webster Online. 3 June 2008 <http://www.merriam-webster.com/dictionary/renovate>.

⁷ Merriam-Webster Online Dictionary. 2008. Merriam-Webster Online. 3 June 2008 <http://www.merriam-webster.com/dictionary/repair>.

competitive. When reviewing the public work statute as a whole, along with the related statutes cited therein, we cannot conclude that the legislature intended to distinguish work that could be classified as a repair from all other work related to public buildings. In the absence of a clear exemption of repairs from the statute, the conclusion that roof repair/replacement projects are not subject to the public work statutes would be contrary to the spirit and purpose of the public works law.

You questioned whether the physical size of a project would determine whether it is subject to the public works law (e.g.; if a school is replacing a portion of a roof, rather than the complete roof, is it subject to the public work requirements?) The physical size of a project does not govern whether the public work statutes apply. The statutes are clear that the cost of the project determines the requirements that apply to a particular project. The required procedures are set out in chapter 36-1-12 and are based on the threshold amount of the project. Generally, the threshold amounts are broken down by projects costing at least \$75,000, those costing at least \$50,000, and those costing at least \$25,000. There are also procedures for projects that cost less than \$50,000 or \$25,000, and those costing more than \$100,000. Regardless of the cost, all public work projects have certain statutory requirements related to bids and quotes that must be observed before contracts are awarded for the project. The public work statute does make provision for awarding contracts for projects necessitated by an emergency without regard to the cost of the project. Ind. Code § 36-1-12-9. Upon declaration of an emergency, a contract for a public work project may be awarded without advertising for bids if bids or quotes are invited from at least two (2) persons known to deal in the work required to be done. *Id.*

Chapter 20-20-1 permits the creation of educational service centers to allow school corporations to cooperate and share programs and services that they cannot individually provide. An educational service center is an extended agency of the school corporation. Ind. Code § 20-20-1-2(a). The types of programs and services that may be collectively implemented through an educational service center are enumerated in the statute and include, among other things, curriculum development, in-service education, instructional materials, computer use, and purchasing and financial management. Ind. Code § 20-20-1-2(b). The State Board of Education has promulgated a rule concerning educational service centers and the rule states that “[t]he primary purpose for the establishment and operation of an educational service center shall be to perform educational planning on a cooperative basis and to assist in meeting specific educational needs in participating school districts which could be better provided by an educational service center than by the districts themselves.” 511 IAC 4-4-1(A). Our review of the statutes finds nothing to indicate that the legislature intended that school corporations participating in educational service centers be excepted from the public work statutes for projects that come within the definition of a public work.

We are aware that SB 238, introduced in the 2008 legislative session, would have added section 20-20-1-13(a) specifying that chapter 36-1-12 (Public Work Projects) applies to a public work project for which an educational service center is accepting bids and awarding contracts on behalf of member school corporations. It appears that this new

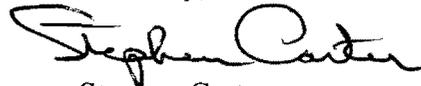
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section may have been intended as clarification of the issue you raise rather than a change in the existing law. Whatever the intent, the bill did not pass.

Conclusion

It is the opinion of this Office that school corporations are covered by the public work statute and are subject to the procedures for bids and quotes whenever they contract for public work even when the public work is contracted through an educational service center. The process required to award a contract for a particular public work project is determined by the cost of the project except in the event of a declared emergency. The definition of "public work" includes repairs to a roof, including those made to a portion of a roof.

Sincerely,

A handwritten signature in black ink that reads "Stephen Carter". The signature is fluid and cursive, with the first name "Stephen" written in a larger, more prominent script than the last name "Carter".

Stephen Carter
Attorney General

Elizabeth A. Brown
Deputy Attorney General