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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

June 29, 1978

FILE NO. S-1365

STATE MATTERS:
Expenditure of State Funds
to Remodel Leased Premises

Honorable Robert G. Cronson
Auditor General
Lincoln Tower Plaza, 2nd Floor
524 South Second Street
Springfield, Illinois 62706

Dear Auditor General Cronson:

This responds to your letter wherein you ask that I clarify the conclusion stated in opinion No. S-1299, issued October 28, 1977. In that opinion, I advised the Capital Development Board that it could not expend State moneys to remodel property leased by the State from a private owner. The opinion relied on section 2 of "AN ACT to punish fraud or extravagance in the expenditure of money appropriated for public improvements" (Ill. Rev. Stat. 1977, ch. 127, par. 132.52)

(hereinafter cited as the Fraud in Public Contracts Act), which reads in pertinent part as follows:

> "Any person or persons, commissioner or commissioners, or other officer or officers, entrusted with the construction or repair of any public work or improvement, as set forth in Section 1, who shall expend or cause to be expended upon such public work or improvement, the whole or any part of the moneys appropriated therefor, or who shall commence work, or in any wise authorize work to be commenced, thereon, without first having obtained a title, by purchase, donation, condemnation or otherwise, to all lands needed for such public work or improvement, running to the People of the State of Illinois; said title to be approved by the Attorney General, and his approval certified by the Secretary of State and placed on record in his office, shall be deemed guilty of a Class A misdemeanor * * *."

As you note in your letter, the title requirement in section 2 applies only to the construction or repair of a public work or improvement described in section 1 of the Act (Ill. Rev. Stat. 1977, ch. 127, par. 132.51). Section 1 reads as follows:

> "Whenever the General Assembly shall pass any enactment for the construction or repair or [sic] any public work or improvement, of the state, of any character or name whatsoever, and the said enactment, shall have become a law, and plans, specifications and estimates for the construction or repair of said public work or improvement have been submitted to and approved by the authorities designated in said law, and an appropriation has been made to defray the estimated expense thereof; any person or persons, commissioner or commissioners, or other officer or officers, entrusted with the execution of said public work or improvement, who shall so change, alter or modify, or permit or connive at such change, alteration

> or modification by any person or persons under his or their direction or control, directly or indirectly, so as to incur a greater cost and expense in the construction or repair of such public work or improvement, than was specified by the law authorizing it, and the appropriation made in pursuance thereof, shall be deemed guilty of a Class A misdemeanor."

The Fraud in Public Contracts Act does not define the terms "public work" and "improvement", and there are no court cases which construe these terms as used in the Act. Generally, both terms signify betterments of a permanent nature which add to the value of real property.

Black's Law Dictionary 1781 (4th ed. 1968) defines "public work" as:

> "Works, whether of construction or adoption, undertaken and carried out by the national, state or municipal authorities, and designed to subserve some purpose of public necessity, use, or convenience; such as public buildings, roads, aqueducts, parks, etc. . . . All fixed works constructed for public use . . ."

In Ellis v. Common Council of the City of Grand Rapids (1900), 123 Mich. 567, 569, 82 N.W. 244, 245, the Supreme Court of Michigan defined the term "public works" as follows:

> "The term 'public works' is defined as 'all fixed works constructed for public use, as railways, docks, canals, waterworks, roads, etc.'"

Citing the definitions in Black's Law Dictionary and the Ellis case, the Supreme Court of Louisiana has concluded that the term

"public work" means "a building, physical improvement, or other fixed construction." Wallace Stevens, Inc. v. Lafourche Parish Hospital District No. 3 (La. 1975), 323 So. 2d 794, 796.

The term "improvement" was defined by the Supreme Court of Washington in Siegloch v. Iroquois Mining Co. (1919), 106 Wash. 632, 636, 181 P. 51, 53 as follows:

> "The term must mean improvements of the realty; that is to say, such things as are placed thereon by the way of betterments which are of a permanent nature and which add to the value of the property as real property. This would include buildings and structures of every kind, and also such machinery as was placed thereon of a permanent nature and which tended to increase the value of the property for the purposes for which it was used; . . ."

In the broad sense of the term, a "remodeling" project undertaken by a State agency qualifies as a public work or improvement. Like the terms "public work" and "improvement", the term "remodeling" usually refers to a permanent betterment. 76 C.J.S. Remodel 906 (1952) states:

> "Remodeling of a building is more than repairing it or making minor changes therein. The ordinary significance of the term imports a change in the remodeled building practically equivalent to a new one."

Using this definition of "remodeling", it is clear that a State agency may not undertake a remodeling project on premises leased from a private owner. A State agency's remodeling project

which in fact constitutes a public work or improvement falls within the scope of section 1 of the Fraud in Public Contracts Act; and, thus, according to section 2 of that Act, the officer entrusted with carrying out the project must obtain title to the premises on which the remodeling work is done.

In a narrower sense, however, the term "remodeling" may refer to changes that do not constitute a permanent betterment in the premises leased by a State agency. In this sense, "remodeling" is synomymous with "repair" which means work on the premises required to keep them in their original condition without increasing their value. (Lee v. Board of Education (1924), 234 Ill. App. 141, 148.) Remodeling of this type is not a public work or improvement and, therefore, is not subject to the title requirement in section 2 of the Fraud in Public Contracts Act. Assuming that the remodeling project qualifies as a "repair or maintenance" of the leased premises, the agency may pay for the project from its appropriation for contractual services. Ill. Rev. Stat. 1977, ch. 127, par. 151a.

In summary, a State agency may not expend State moneys to remodel property leased by the State when the remodeling project constitutes a public work or improvement. In stating my conclusion in opinion No. S-1299, I assumed this type of remodeling project.

I did not intend to advise in that opinion that a State agency was prohibited from remodeling its leased premises when the remodeling work did not constitute a public work or improvement. Remodeling work which merely repairs or maintains the agency's leased premises may be done without the State acquiring title to the premises. Whether a particular remodeling project constitutes a public work or improvement is a question of fact.

Very truly yours,

ATTORNEY GENERAL