

Opinion No. 63-102

August 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Leonard J. De Layo Superintendent of Public Instruction Santa Fe, New Mexico

QUESTION

QUESTIONS

1. The 1963 State Legislature enacted Chapter 274, Laws of 1963, creating the State Public School Plant Facilities Commission. What constitutes an academic classroom within the meaning of such Act?
2. For purposes of such Act are classrooms used for home economics, science laboratory, music, art, and shop considered academic classrooms?
3. Must the Public School Plant Facilities Commission approve a grant on the basis of making up the difference between bid estimates and available funds, or on the difference between the actual low bid and available funds?

CONCLUSIONS

1. See Analysis.
2. See analysis.
3. The Commission may, in its discretion, approve a grant in the amount of the difference between the lowest responsible bid estimate and available funds of the school district, subject to certain prescribed limits on the total amount of the grant.

OPINION

{*221} ANALYSIS

The applicable statutory provision relating to the first question presented above is contained in Laws 1963, Chapter 274, Section 1:

"There is created the public schools plant facilities commission whose function shall be to take under consideration applications from independent, municipal and county boards of education for state assistance in school plant facilities construction. **Assistance under the provisions of this act shall be limited to academic classroom facilities, excluding gyms, cafeterias and other school facilities not directly related to the academic program of instruction..** ." (Emphasis supplied)

The term "academic" is defined in Webster's New Collegiate Dictionary, Second Edition, as follows:

"1. Pertaining or belonging to an academy, college, or University, or to colleges, etc.

2. Literary, classical, or liberal, rather than technical or professional; as an academic course.

3. Conforming to scholastic traditions or rules; conventional. . .

{*222} 4. Theoretical . . ." (Emphasis supplied)

Also, as defined in Webster's New International Dictionary, Third Edition, the word "academic" means:

". . . of, belonging to, or associated with an academy or school esp. of higher learning . . . of or belonging to literary or art studies. . ."

Webster's New Collegiate Dictionary, Second Edition, defines "classroom" to mean:

"a room in a school or college building for class recitations, lectures, etc."

In interpreting the language of a statute the words used in the Act are to be given their ordinary and usual meaning unless a different intent is clearly indicated. **State ex rel. State Highway Commission v. Marquez**, 67 N.M. 353, 355 P. 2d. 287; **Brown v. Bowling**, 56 N.M. 96, 240 P.2d. 846. and **McNair v. School District No. 1 of Cascade County, et al.**, 288 P. 188, 87 Mont. 423.

From the above, it is clear that the legislature intended that the Public Schools Plant Facilities Commission restrict the granting of moneys under Laws 1963, Chapter 274, to boards of education seeking to acquire land, renovate existing facilities, or make additions to or to erect buildings, intended for use primarily for classrooms.

The words "academic classrooms" as utilized in the above statute have a narrower application than the term "classrooms" and mean those school rooms which are designed and intended to be used **primarily** for the teaching of the fundamental and more basic school subjects and which are of a liberal educational nature as distinguished from classrooms utilized primarily to teach vocational or technical courses such as automotive mechanics, machine use, woodworking, printing, shop work, cooking, sewing, or agriculture. In other words, it is plain that the limitation imposed was against the use of such funds for building, equipping, or acquiring buildings or facilities having for their **basic or sole purpose** the teaching of vocational, trade or technical subjects as differentiated from the basic educational curricula. Included within the permissive scope of the act would be **classrooms** intended for use in teaching such basic courses as: English, mathematics, history, geography, speech, music, art, physics, science, civics, language and hygiene.

Under the language of the statute the legislature clearly intended to exclude the granting of such monies for usage of a nonclassroom nature such as gyms, cafeterias, school offices, lounges, locker rooms, heating plants, shower or toilet facilities, theatres, auditoriums, maintenance rooms, printing plants or shops. It should be noted however, that if the **primary purpose** of the classroom is within the scope of permissive classroom purposes as outlined above, then, the school unit can properly utilize the classroom for other subsidiary purposes as long as it does not detract from its primary purpose.

In answer to your second question, under the analysis made by us above, it is our opinion that classrooms having for their primary purpose the teaching of home economics, trades, shop or vocational instruction are not within the intendment of the act. Classrooms for use in teaching science, including science laboratories, {*223} art or music, we believe to be within the term "academic classroom." This interpretation we believe is further supported by the fact that the legislature in enacting such legislation restricted the granting of moneys under the act to those school districts which have made a maximum effort financially to bond themselves to the capacity permitted under law for school purposes and yet were in serious need of additional basic classroom facilities. It is important to note however, as pointed out above, that if the classroom is primarily designed as an academic classroom it may be employed for such secondary or other purposes as the school unit may determine. Certainly, the designing or constructing of classrooms with such funds, so as to achieve the maximum usage and benefit was intended to be permitted.

In your third question you inquire if the commission must approve a grant on the basis of making up the difference between bid estimates and available funds or on the difference between the actual low bid and available funds.

The applicable statutory section pertaining to such question is contained in Laws 1963, Chapter 274, Section 6:

"Fiscal Limitations. -- Under the provisions of this act the public school plant facilities commission **is authorized to make up the difference between bid estimates and available funds for a project approved by the commission**, provided, however, that funds for a single project may not be approved that is in excess of seven per cent of the total appropriation for school construction in the appropriations bill, or fifty thousand dollars (\$ 50,000.00), whichever sum is greater." (Emphasis supplied).

School districts generally, are subject to the provisions of Public Purchases Act (Sec. 6-5-1, N.M.S.A., 1953 Compilation, et seq.) and as specified in Sec. 6-5-4, N.M.S.A., 1953 Compilation, a school board is required legally to accept the bid of the lowest responsible bidder where it proposes to make a purchase, or enter into a contract for materials or labor, or both, which involve an expenditure of more than \$ 500. In our opinion the legislature in enacting Laws 1963, Chapter 274, did not intend to limit the Commission to granting funds in the amount of the lowest bid submitted on projects submitted for its consideration, but in keeping with the purposes of the Public Purchases

Act, the lowest responsible bid may be considered. Where, however, the low bid received is not considered by the local school board to be the lowest responsible bid, the Commission in passing on the proposed grant should review the bids and satisfy itself that the low bid submitted to the school district should in fact have been rejected.

By: Thomas A. Donnelly

Assistant Attorney General