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IMPROVEMENT — PROPERTY; REALTY, PERSONALTY—  
TERMS CONSTRUED—§§133.01 (E), §133.05 R.C. 247 OAG 1951,  
p. 92, overruled.

SYLLABUS:

Although the term “improvement” as defined in Division (E) of Section 133.01, Revised Code, is sufficiently broad to include personalty having an estimated life or usefulness of five years or more, the use of this term in Section 133.05, Revised Code, in the expression “improvement . . . . of any one county building” is in such context as to signify the accomplishment of an addition or betterment to the real estate, and does not encompass the mere installation of equipment housed and used in a building without being permanently affixed to the realty. Opinion No. 247, Opinions of the Attorney General for 1951, p. 92, overruled.

Columbus, Ohio, October 14, 1958

Hon. Paul J. Mikus, Prosecuting Attorney  
Lorain County, Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The County Commissioners of our county are desirous of issuing bonds in an amount in excess of \$20,000, with the object of using the proceeds of such issue to acquire certain office equipment which admittedly will have an estimated life or usefulness for five years or more.

“I am familiar with Opinion No. 247, Opinions of the Attorney General for 1951, page 92, but find myself in disagreement with the conclusion therein reached for the reason that the

word 'improvement' as used in Section 133.05, Revised Code (formerly Section 2293-16, General Code), is used in such context that it could refer only to a building improvement.

"The purpose of this letter is, therefore, to ask you to review that ruling with particular reference to the point I have indicated."

The syllabus in Opinion No. 247, Opinions of the Attorney General for 1951, p. 92, is as follows:

"The acquisition and installation in a county court house of equipment, including a two-way radio system, a photostat machine, a blue-print machine and a tax billing machine, all with an estimated life or usefulness of five years or more, constitute an 'improvement' within the meaning of Section 2293-16, General Code; and a bond issue for such purpose is subject to the limitations therein provided."

In construing Section 2293-16, General Code, now codified in Section 133.05, Revised Code, the writer applied the statutory definition of the term "improvement," as used in that section, as set out in former Section 2293-1, General Code. This definition was as follows:

"\* \* \* 'Permanent Improvement' or 'Improvement' shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways. \* \* \*"

Following reference to this definition the writer of Opinion No. 247, *supra*, said:

"\* \* \* This definition is sufficiently broad, in my opinion, to include personal property as well as realty, and to include *items of equipment which are not in any sense affixed to real estate* so as to fall into the classification of fixtures, provided, of course, that such items have an estimated life or usefulness of five years or more. \* \* \*" (Emphasis added)

The term "improvement," thus defined and thus construed, was used in former Section 2293-16, General Code, now found without substantive change in Section 133.05, Revised Code, in the following context:

"\* \* \* Provided that, except by vote of the electors, bonds shall not be issued by any county in an amount exceeding twenty

thousand dollars in any period of five years, for the acquisition, construction, *improvement*, enlargement or extension of *any one county building, including the acquisition of a site therefor*, but this limitation shall not apply to buildings for a district consisting of two or more counties.” (Emphasis added)

The writer of Opinion No. 247, *supra*, seemingly overlooked the restrictive use of the term “improvement” in this section, for the context in which it is used plainly indicates that this expression refers not to the accomplishment of an improvement of any and every sort which is encompassed within the statutory definition, but rather to an improvement of a particular sort, i.e. an “improvement \* \* \* of any one county building.”

I am wholly in accord with the writer of the 1951 opinion as to the scope of the statutory definition here involved, and specifically I would agree that it is sufficiently broad, where the term “improvement” is used alone, to include equipment which is not affixed to the realty, provided it has an estimated life of five or more years. I cannot agree, however, that the expression “improvement \* \* \* of (a) \* \* \* building” can mean more than an addition or betterment made to real property; and I am clearly of the opinion that such expression implies a restriction to those improvements which involve additions which are in fact affixed to the real estate. In short, I conclude that an “improvement of (a) \* \* \* building” could not consist merely of equipment which is admittedly personalty designed to be housed and used in a building without being so affixed to the real estate.

In specific answer to your inquiry, therefore, it is my opinion that although the term “improvement” as defined in Division (E) of Section 133.01, Revised Code, is sufficiently broad to include personalty having an estimated life or usefulness of five years or more, the use of this term in Section 133.05, Revised Code, in the expression “improvement \* \* \* of any one county building” is in such context as to signify the accomplishment of an addition or betterment to the real estate, and does not encompass the mere installation of equipment housed and used in a building without being permanently affixed to the realty. Opinion No. 247, Opinions of the Attorney General for 1951, p. 92, overruled.

Respectfully,  
WILLIAM SAXBE  
Attorney General