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1. REPAIR—PAINTING SCHOOL BUILDING OR ANY PORTION THEREOF—REPAIR OR IMPROVEMENT OF BUILDING—WORK SUBJECT TO PROVISIONS OF SECTION 4834-18 G. C.
2. COST OF PAINTING SCHOOL BUILDING IN CITY SCHOOL DISTRICT—WHERE IN EXCESS OF THREE THOUSAND DOLLARS AND IN ANY OTHER DISTRICT ONE THOUSAND DOLLARS—BOARD OF EDUCATION WITHOUT AUTHORITY TO PROVIDE MATERIALS AND EMPLOY OWN PERSONNEL ON SALARY BASIS—EXCEPTION, URGENT NECESSITY OR SECURITY AND PROTECTION OF SCHOOL PROPERTY.
3. WHERE FACTS JUSTIFY ACTION, BOARD OF EDUCATION MAY DECLARE A CASE OF URGENT NECESSITY—WAIVE PROCEDURE—UNDERTAKE REPAIRS BY “FORCE ACCOUNT.”
4. WHERE COST OF PAINTING DOES NOT EXCEED LIMITS PROVIDED BY SECTION 4834-18 G. C. SECTION DOES NOT APPLY—WORK MAY BE DONE BY “FORCE ACCOUNT.”

SYLLABUS:

1. Painting of a school building, or any portion thereof, constitutes a repair or improvement of a building within the meaning of Section 4834-18 of the General Code, and the manner of doing such work is subject to the provisions of said section.

2. Where the cost of painting a school building in a city school district exceeds three thousand dollars, and in any other district one thousand dollars, a board of education is without authority to provide materials and employ on a salary basis its own personnel to render such service except in cases of urgent necessity, or cases involving the security and protection of school property.

3. Where the facts justify such action, a board of education may declare a case of urgent necessity, waive the procedure set forth in Section 4834-18 of the General Code, and undertake the painting of a school building by the method of so-called “force account.”

4. Where the cost of painting a school building does not exceed the limits provided by Section 4834-18, General Code, the provisions of said section do not apply, and a board of education may do such work by “force account.”

Columbus, Ohio, March 20, 1951

Hon. Joseph T. Ferguson, Auditor of State  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is respectfully requested in reference to the provisions of General Code Section 4834-18.

"A question has recently arisen as to whether or not the painting of a school building, or any portion thereof, constitutes a repair or improvement of a building under the meaning of such section, and whether such work is subject to the provisions of such section, so as to require such work to be let by contract, or whether in the alternative a city school district may provide the material and employ on a salary basis its own personnel to render such services."

"In the event that a city school district has a painting project that will cost more than three thousand dollars, may the Board of Education declare that a case of urgent necessity exists, and proceed to waive the requirements of competitive bidding, and then provide for the work to be done by force account, presuming that facts do exist that justify the declaration of a situation of urgent necessity? In the event that the cost of such work is less than three thousand dollars, may a board do such work by force account?"

Section 4834-18 of the General Code provides:

"When the board of education determines to build, repair, enlarge or furnish a schoolhouse or schoolhouses, or make any improvements or repairs, the cost of which will exceed in city districts, three thousand dollars, and in other districts one thousand dollars, except in cases of urgent necessity, or for the security, and protection of school property, it must proceed as follows:

"1. For the period of four weeks, the board shall advertise for bids in some newspaper of general circulation in the district and two such papers, if there are so many. If no newspaper has a general circulation therein, then by posting such advertisement in three public places therein. Such advertisement shall be entered in full by the clerk, on the record of proceedings of the board.

"2. The bids, duly sealed, must be filed with the clerk by twelve o'clock noon, of the last day stated in the advertisement.

"3. The bids shall be opened at the next meeting of the

board, be publicly read by the clerk, and entered in full on the records of the board; provided, that the board of education may by resolution provide for the public opening and reading of such bids by the clerk, immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for the tabulation of such bids and a report thereof to the board at its next meeting.

"4. Each bid must contain the name of every person interested therein, and shall be accompanied by a bid bond or by a certified check upon a solvent bank, as the board may require, payable to the order of the treasurer of the board of education, in an amount to be fixed by the board of education or by an officer designated for such purpose by the board, said bond or check to be in no case less than five per cent of the amount of the bid and conditioned that if the bid be accepted, a contract will be entered into, and the performance of it properly secured.

"5. When both labor and materials are embraced in the work bid for, the board may require that each be separately stated in the bid, with the price thereof, or may require that bids be submitted without such separation.

"6. None but the lowest responsible bid shall be accepted. The board in its discretion may reject all of the bids, or accept any bid for both labor and material for such improvement or repair, which is the lowest in the aggregate.

"7. The contract must be between the board of education and the bidders. The board shall pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates as the work progresses.

"8. When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between such bidders.

"9. When there is reason to believe there is collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected."

To answer the first question, whether painting a school building constitutes a repair or improvement of a building within the meaning of the foregoing statute, it seems clear that painting is within the contemplation of the statute. In *Bolce v. Board of Education* (1934), 4 Ohio Opinions, 423, the Common Pleas Court of Hamilton County held that painting the interior of a school building came within the classification of "repairs or improvements" within the meaning of Section 7623 of the General Code. Section 7623, then in force, contained substantially

the same provisions as are now found in Section 4834-18 of the General Code, quoted above.

It is my opinion, therefore, that painting of a school building, or any portion thereof, constitutes a repair or improvement of a building within the meaning of Section 4834-18 of the General Code, and the manner of doing such work is subject to the provisions of said section.

The purpose of all laws requiring competitive bids as a condition precedent to the letting of contracts by public authorities is to afford an open and equal opportunity for bidding to those who desire to bid, and also to secure for the benefit of the public the lowest qualified bid.

In discussing former Section 7623, referred to above, the Supreme Court of Ohio, in its opinion in *Perkins v. Bright*, 109 Ohio St. 14, at page 21, said:

“\* \* \* The language of the statute under consideration is clear, plain, positive, and mandatory, and, if the object sought to be obtained by the Legislature is not the best for the public, its amendment or revision may be sought in the Legislature, but as long as the law remains upon the statute books in its present form we must give it such construction as its plain letter requires.”

It cannot be questioned that where the cost of painting a school building in a city school district exceeds three thousand dollars, and in any other district one thousand dollars, a board of education is without authority to provide materials and employ on a salary basis its own personnel to render such service except in cases of urgent necessity, or cases involving the security and protection of school property.

In answer to your third question, the meaning of the statute is clear that where the facts justify such action, a board of education may declare a case of urgent necessity, waive the procedure set forth in Section 4834-18 of the General Code, and undertake the painting of a school building by the method of so-called “force account.”

In discussing what is meant by “urgent necessity,” one of my predecessors, in an opinion found in *Opinions of the Attorney General for 1918*, Vol. I, page 591, said:

“‘Urgent necessity’ means ‘more than convenience and more than ordinary necessity. It is something which requires immediate action. Something which cannot wait. When pleaded as an

excuse for a failure to comply with any statutory requirement it must be decided by the circumstances of the particular case in which it arises,' and where a case of 'urgent necessity' exists, the provisions of section 7623 G. C. do not apply."

The syllabus of a more recent opinion, reported in the Opinions of the Attorney General for 1927, Vol. II, page 1596, states:

"Whether or not a case of urgent necessity exists so that a board of education may be enabled to build, alter or repair a school house or make other improvements without complying with the provisions of Section 7623, General Code, as to competitive bidding is dependent upon the determination and declaration of the board itself and cannot be questioned for any reason other than fraud, collusion, absence of good faith or abuse of discretion."

However, in *Bolce v. Board of Education*, supra, the Hamilton County Court questioned whether a case of "urgent necessity" could exist where mere painting of school buildings was concerned.

To answer your last query, in the event the cost of painting does not exceed three thousand dollars, the right of a board of education in a city district to furnish material and employ labor to do such work by so-called "force account" seems beyond question. Section 4834-10 of the General Code provides:

"The board of education of any school district, except a county school district, may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control."

The authority granted by the preceding statute is limited in its application by the section, 4834-18, here in question, but where the cost of painting a school building does not exceed the limits provided by Section 4834-18, General Code, the provisions of said section do not apply, and a board of education may do such work by "force account."

Respectfully,

C. WILLIAM O'NEILL

Attorney General