

LETTER OPINION
2000-L-19

February 18, 2000

Rep. Bruce Eckre
State Representative
1300 North 7th Street
Wahpeton, ND 58075-3625

Dear Representative Eckre:

Thank you for your letter asking whether the construction of a building by an area vocational and technology center constitutes "real property" which requires approval of two-thirds of the relevant school boards under N.D.C.C. § 15-20.2-07(5). The building would be an addition to the present construction technology shop located on Wahpeton Public School District land and the addition would be built by North Dakota State College of Science students and high school students.

The governing board of an area vocational and technology center has the following power:

To lease, acquire, purchase, or sell vocational education facilities, including real property, for an area vocational and technology center; provided, that any purchase or sale of real property must first be approved by two-thirds of the school boards of the participating school districts.

N.D.C.C. § 15-20.2-07(5) (emphasis added).

"Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears" N.D.C.C. § 1-02-02 (emphasis added). "Words and phrases must be construed according to the context" N.D.C.C. § 1-02-03.

N.D.C.C. ch. 15-20.2 does not provide a definition for "facilities" or "real property." Unless the context otherwise requires, real property includes lands and buildings. N.D.C.C. § 1-01-49(13). However, it is my opinion that the use of "real property" in subsection 5 of N.D.C.C. § 15-20.2-07 indicates an intention that "real property," as used in that sentence, has a different meaning than "facilities."

Rep. Bruce Eckre
February 18, 2000
Page 2

As subsection 5 of N.D.C.C. § 15-20.2-07 states, a center board may "lease, acquire, purchase, or sell vocational education facilities, including real property." Under this provision, "real property" is included within the meaning of "facilities." But only the purchase or sale of "real property" must first be approved by two-thirds of the school boards of the participating school districts. Under the general definition of "real property" in N.D.C.C. § 1-01-49(13), "real property" and "facilities" would be synonymous. However, the context of N.D.C.C. § 15-20.2-07 distinguishes "real property," for purposes of the two-thirds vote requirement, from other "facilities." Accordingly, one must conclude that the plain meaning of "real property" in N.D.C.C. § 15-20.2-07 is limited to land and does not include a building.

Furthermore, the two-thirds vote requirement in N.D.C.C. § 15-20.2-07 applies only to the "purchase" or "sale" of real property. It is doubtful that the construction of a building by the center could be considered a "purchase" of real property, because the center is constructing rather than purchasing the building.

Therefore, it is my opinion that the construction of an addition to the construction technology shop which does not also involve the purchase or sale of land does not require the approval of two-thirds of the school boards of the school districts participating in the area vocational and technology center.

Sincerely,

Heidi Heitkamp
Attorney General

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