

**OPINION**  
**53-5**

May 29, 1953(OPINION)

**APPROPRIATIONS**

RE: Improvements and Repairs - What Constitutes

This office is in receipt of your request of May 28, 1953, for an opinion regarding two chapters of the 1949 Session Laws, to-wit, chapters 76 and 321.

That part of chapter 76 in which you are concerned provides for an appropriation as follows:

"Improvements and repairs:

1. Re-roofing, repairing and changing windows and painting hospital building ----- \$75,000.00"

Chapter 321 of the same Session Laws provides that the appropriation made by the Thirtieth and any subsequent Legislatures of the state for buildings, additions to buildings and permanent improvements for all charitable, penal, and educational institutions of the state of North Dakota, shall constitute permanent funds for such purposes and any balance that may remain in any such appropriation at the end of the biennium for which it was appropriated shall not revert to the general fund, but shall constitute a permanent fund available for use for the designated purpose until expended.

Your question is as to whether or not the appropriations made by chapter 76 may be construed as permanent improvements so as to qualify for continuing of the appropriation until expended.

The question which presents itself is what is meant by the phrase "permanent improvements". We find this question passed upon by several courts wherein they hold that "permanent improvements" are not necessarily everlasting in character, but are such as rest on or are attached to the soil and are enduring, not intended for removal. *Schmidt v. Sulzby*, 255 Ala. 301, 87 So. 823. Again "permanent improvements" mean such betterment as will add to the intrinsic value of the property at the time. *Prichard v. Williams*, 181 N.D. 46, 106 S.E. 144. Painting a building that needed painting was held "permanent improvement" in the case of *Moore's Guardian v. Williamson's Ex'r*, 257 S.W. 711, 712, 201 Ky. 561.

From various holdings of courts, it is the opinion of this office that the words "permanent improvements" mean such improvements as are placed upon or added to a structure for the purpose of improving the same and not removable, except by the normal wear and tear. It is, therefore, our opinion that the appropriations made by chapter 76 for improvements and repairs of the State Hospital for the insane qualify for the definition "permanent improvement" as used in chapter 321, and therefore does not revert to the general fund, but shall constitute a permanent fund available for the use designated in the appropriations.

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Attorney General