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Opinion No. 08-117

Is Tenn. Code Ann. § 62-2-107 applicable to the replacement of windows at a county courthouse?

QUESTION

Does Tenn. Code Ann. § 62-2-107 require a county to utilize the services of an architect and/or engineer in the replacement of windows at a county courthouse where the cost of the replacement exceeds twenty-five thousand dollars ($25,000.00)?

OPINION

No. Under the general definition of the terms applicable to Tenn. Code Ann. § 62-2-107, a county would not be required to utilize the services of an architect or engineer regarding any plans, specifications and estimates for the replacement of windows where the cost exceeds twenty-five thousand dollars ($25,000.00) unless said replacement involved architecture or engineering.

ANALYSIS

The pertinent language of Tenn. Code Ann. § 62-2-107 states:

> (a) Neither the state, nor any county . . . shall engage in the construction or maintenance of any public work involving architecture, engineering or landscape architecture for which the plans, specifications and estimates have not been made by a registered architect, registered engineer or registered landscape architect.
>
> (b) Nothing in this section shall be held to apply to such public work wherein the contemplated expenditure for the complete project does not exceed twenty-five thousand dollars ($25,000.00), and such work does not alter the structural, mechanical or electrical system of the project.

Tenn. Code Ann. § 62-2-107 prohibits a county from engaging in construction and maintenance involving architecture or engineering on a public work unless the plans, specifications, and estimates had been made by a registered architect or engineer except where two specific criteria combine: (1) the estimated cost of the construction or maintenance does not exceed 25,000.00; and (2) the work does not alter the structural, mechanical, or electrical system of the project. Based on

the question as posed, the estimated cost of the replacement of windows would exceed $25,000.00 Therefore these exceptions would not apply.

The next question is whether the described window replacement project constitutes "construction" or "maintenance" that involves either "architecture or engineering." In construing a statute, Tennessee courts have opined that their duty "is to ascertain and give effect to the intention and purpose of the legislature." *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000); *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). Such legislative intent "is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *Lipscomb*, 32 S.W.3d at 844 (quoting *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997)). When the statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application. *Carson Creek Vacation Resorts, Inc. v. State Dep't of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993).

"Construction" is not defined in the chapter containing Tenn. Code. Ann. § 62-2-107. However, the term has been defined in other Tennessee cases and statutes. The Local Government Public Obligations Act of 1986, Tenn. Code Ann. § 9-21-101, *et seq*., was enacted as the framework to allow local governments to issue bonds for the financing of public works projects. In that Act "construction" is defined as building, reconstruction, erection, *replacement*, extension, repairing, betterment, embellishment, improvement . . . ." Tenn. Code Ann. § 9-21-105(4) (emphasis added). *See Phillips v. County of Anderson*, No. E2000-01204-COA-R3-CV, 2001 WL 456065, at *8 (Tenn. Ct. App. Eastern Division, April 30, 2001). Black's Law Dictionary defines "construction" as the "act of building by combining or arranging parts of elements; the thing so built." This definition has been cited in a number of other jurisdictions. *See Sheedy v. Missouri Highways and Transportation Commission*, 180 S.W.3d 66, 73 (Mo. App. S.D., 2005); *RNC Corp. v. Paramount Pavilion Group, LLC*., No. Civ.A.03-CV-1706, 2004 WL 627057, at *9 (E.D. P.A., March 10, 2004).

Tennessee case law has also defined both the terms "maintain" and "maintenance". "Maintain" is described as "to keep in an existing state; preserve from failure or decline". *Norandal USA, Inc., v. Johnson*, No. M2003-00559-COA-R3-CV, 2004 WL 1877272, at *8 (Tenn. Ct. App. Middle Division, August 20, 2004). "Maintenance" is defined as "the labor of keeping something in a state of repair or efficiency." *Allstate Ins., Co. v. Watts*, C.A. No. 1, 1990 WL 95572 at *3 (Tenn. Ct. App., Western Division, July 12, 1990) (*reversed on other grounds*, 811 S.W.2d 883, Tenn. 1991). Black's Law Dictionary (7th ed. 1999) defines "maintenance" as "[t]he care and work put into property to keep it operating and productive; general repair and upkeep." Other courts have also cited to Black's definitions in determining the meaning of "maintenance." *See Oeverman v. Prinsburg Farmers Co-op*, No. C3-95-1616, 1996 WL 5812 at *2, n. 1 (Minn. Ct. App. Jan. 9, 1996); *Gordon v. Mashburn*, 995 P.2d 1114, 1116 (Okla. 1999). Based upon these definitions, we conclude that a window replacement project of the type described by the requestor would qualify as "construction" or "maintenance" or both.

Whether a replacement of windows is work that involves "architecture or engineering" within the meaning of Tenn. Code Ann. § 62-2-107 is a question of fact. If the replacement were

done in such a way as to alter the structural design, or perhaps, affect the overall strength or stability of the courthouse, then it would most likely be construction or maintenance involving architecture or engineering. Architecture includes designing and drawing plans for buildings. Stability and strengths are elements in practical concepts and definitions of architecture. *State Board of Examiners for Architects and Engineers v. Rodgers*, 167 Tenn. 374, 377 69 S.W.2d 1093 (1934). While the term "engineering" is not specifically defined in any Tennessee cases or statutes, it has generally been defined as "the application of scientific and mathematical principles to practical ends such as the design, construction, and operation of efficient and economical structures, equipment and systems." The American Heritage Dictionary (2nd Coll. Ed. 1985).

Therefore, under Tenn. Code Ann. § 62-2-107, the requirement that an architect or engineer make the requisite plans, specifications and estimates would only apply if the replacement of windows at a courthouse involved architecture or engineering.

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