

of an old one.” (citations omitted) Therefore, it is quite evident that ‘constructing’ referred to and encompassed the erection of *new* facilities.”

“Maintenance” was excluded from the definition of “construction” in *Ferguson v Rochford*, 84 Conn 202, 204; 79 A 177, 178 (1911), as follows:

“. . . The word ‘maintain’ as used in this statute does not mean ‘to provide or construct,’ but means ‘to keep up, not to suffer to fail or decline.’ . . .”

Perhaps the most succinct distinction between the words “construct,” “maintain” and “repair” was made by the court in *Thompson v Bracken County*, 294 SW2d 943, 946 (Ky, 1956), wherein it was stated:

“In short, ‘improve’ and ‘construct’ mean to make better the original status, while ‘maintain’ and ‘repair’ mean to preserve or remedy the original condition. (citations omitted)”

Similar distinctions are found in *Travelers Indemnity Co v Wilkes County*, 102 Ga App 362; 116 SE2d 314 (1960); *People v New York Central R Co*, 397 Ill 247; 73 NE2d 302 (1947); *City & County of San Francisco v San Mateo County*, 17 Cal 2d 814; 112 P2d 595 (1941); *Cabell v City of Portland*, 153 Or 528; 57 P2d 1292 (1936).

Therefore, it is my opinion that the term “construction” as used in section 18 of 1937 PA 240, *supra*, is to be accorded its common meaning and does not encompass the repair or maintenance of public works.

FRANK J. KELLEY,
Attorney General.

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SCHOOL DISTRICTS: Power of board of education to set date of election.

If a board of education of a third class school district declines to hold its election at the time of the local city election, the people may not petition for a vote of the school electors on the question.

Opinion No. 4784

July 11, 1973.

Honorable R. Robert Gacke
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

If a board of education of a third class school district declines to hold its election at the same time as the local city election, may the people petition for a vote of the school electors on the question?

1955 PA 269; MCLA 340.1 *et seq.*; MSA 15.3001 *et seq.*, is known as the School Code of 1955.

In § 108 of the School Code of 1955, *supra*, the Legislature has directed that the regular annual school election in each school district of the third

class shall be held on the second Monday in June by the board. However, pursuant to § 107 of the School Code of 1955, supra, the board of education of a school district of the third class is empowered to:

“. . . determine whether the district shall hold its election at the time of the city or village election. . . .”¹

The Legislature has imposed a duty upon the board of education of a third class school district in § 109 of the School Code of 1955, supra, to call special elections on receipt of the written request of not less than 10% of the registered school electors of the district qualified to vote, but no special election shall be called “unless the question to be voted on and decided thereat may be *decided* by the qualified electors.” (Emphasis added.)

An examination of the provisions of the School Code of 1955, supra, fails to reveal any authority in the qualified school electors of a school district of the third class to decide whether the school district of the third class shall hold its election at the time of the city or village election. On the contrary, as has been demonstrated herein, the Legislature has conferred such discretionary power upon the board of education of a school district of the third class and it has not authorized the board of education of a school district of the third class to share or divide the specific power to determine the time of holding elections with the electors of the school district.

It has been held that a statutory power once delegated by the Legislature to a board of education of a school district cannot be redelegated by that body to the school electors. *Muehring v School District No. 31 of Stearns County*, 28 NW2d 655 (Minn, 1947). Under such authority it is clear that, the Legislature having delegated to the board of education of a school district of the third class the discretionary power to determine whether school elections shall be held at the time of city and village elections, the school electors may not decide the question as provided for in § 109 of the School Code of 1955, supra.

Therefore, it is my opinion that if a board of education of a third class school district declines to hold its election at the time of the local city election, the people may not petition for a vote of the school electors on the question. If it is desirable that the people be permitted to vote on the question, the Legislature should appropriately amend the provisions of the School Code of 1955, supra, to empower them to do so.

FRANK J. KELLEY,
Attorney General.

¹ Although OAG, 1965-1966, No 4411, p 21 (February 19, 1965) denied the power of the board of education of a third class school district to hold its election at same time as city election in 1966, the Legislature by 1965 PA 49 amended § 107 of the School Code of 1955, supra, and granted such power to third class school district boards that previously held their election at same time as the spring biennial election.