

that one who has been assigned the status of a youthful trainee may properly answer "no" when asked whether he has ever before pleaded guilty or been convicted of a crime.

FRANK J. KELLEY,  
*Attorney General.*

730709.1

**ARCHITECTS:** Distinguish repair or maintenance of a public work from construction of a public work.

**PROFESSIONAL ENGINEERS:** Distinguish repair or maintenance of a public work from construction of a public work.

**PUBLIC WORKS:** Distinguish repair or maintenance of a public work from construction of a public work.

**WORDS AND PHRASES:** "Construction," "Repair" and "Maintenance"

The services of a registered architect or a registered professional engineer are not required for maintenance or repair of public works, except for school buildings where the cost of reconstruction or remodeling exceeds \$15,000.00.

Opinion No. 4778

July 9, 1973.

Honorable Stanley F. Rozycki  
State Senator  
The Capitol  
Lansing, Michigan 48902

In your letter of March 6, 1973, you requested my opinion on the following question:

"Does Section 18, Act No. 240, P.A. 1937, as amended, being Section 338.568 of the Compiled Laws of 1948 have reference to 'Construction' of new buildings, to the repair or maintenance of an existing structure, or both?"

Section 18 of 1937 PA 240, as amended, provides:

"It is unlawful for this state, or for any of its political subdivisions, or any county, city, town, township, village or school district to engage in the construction of any public work involving architecture or professional engineering, unless the plans and specifications and estimates have been prepared by, and the construction executed under the direct supervision of, a registered architect or a registered professional engineer, and unless any survey of land on which any such public work has been or is to be constructed shall be made under the supervision of a registered land surveyor. However, nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed \$5,000.00." MCLA 338.568; MSA 18.84(18) (Emphasis added.)

As the statutory language indicates, when certain governmental entities engage in the construction of public works, which require an expenditure

in excess of \$5,000.00, such construction must be planned and supervised by a registered architect or a registered professional engineer.

The answer to your specific question requires my opinion as to whether the language, "engage in the construction of any public work," encompasses the repair or maintenance of any public work.

If the legislature intended that section 18 of 1937 PA 240, *supra*, encompass the maintenance or repair of existing buildings, it could easily have so provided. For example, in section 1, 1937 PA 306, as amended; MCLA 388.851 *et seq*; MSA 15.1961 *et seq*, the legislature set out a more specific standard for school buildings. Section 1 of said act provides, in pertinent part:

"No school building, public or private, or additions thereto, shall be erected, remodeled or reconstructed in the state except it be in conformity with the following provisions:

"(a) All plans and specification for buildings shall be prepared by, and the construction supervised by, an architect or engineer who is registered in the state of Michigan. Before the construction, reconstruction or remodeling of any school building or addition thereto is commenced, the written approval of the plans and specifications by the superintendent of public instruction or his authorized agent shall be obtained. . . ." MCLA 388.851; MSA 15.1961

"Remodeling" is defined in section 1a(b) as follows:

" 'Remodeling' shall mean the alteration, construction or remodeling of partitions, hallways, stairways and means of egress, the replacement, relocation or reconstruction of heating, ventilating and sanitary equipment." MCLA 388.851a; MSA 15.1961(1)

As the quoted language reveals, the word, "construction" was not simply used as an all-encompassing term. Instead, the legislature set out, with specificity, the activities regulated under 1937 PA 306, *supra*. This statute does not apply to construction, reconstruction or remodeling of school buildings costing less than \$15,000.00. MCLA 388.855a; MSA 15.1966.

It is an established rule of statutory construction that two legislative acts dealing with the same subject matter, enacted contemporaneously, must be construed together for the purpose of determining legislative intent. *Van Antwerp v State*, 334 Mich 593 (1952). 1937 PA 240, *supra*, and 1937 PA 306, *supra*, are two such enactments. Consequently, it is reasonable to conclude that the term "construction" found in section 18 of 1937 PA 240, *supra*, an act similar in nature to 1937 PA 306, *supra*, adopted in the same year, was also not intended to be all-encompassing.

My opinion that the term "construction" does not include repair or maintenance is in accord with judicial opinions in other jurisdictions. Thus, the court in *Commonwealth v McHugh*, 406 Pa 566, 570; 178 A2d 556, 558 (1962), offered the following definition:

". . . In *Hoffman v. Kline*, 300 Pa. 485, 494, 150 A.2d 889, (1930), we quoted with approval the following from *In re Howett*, 10 Pa. 379, (1849) "In the common understanding and language of the people, when we speak of the erection or construction of a house or a building, we mean the erection of a new house or building, and not the repairs

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.*

730711.1

**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