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OFFICIAL OPINION NO. 82

October 2, 1953.

Mr. R. R. Wickersham,
State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Mr. Wickersham:

I have your request for an official opinion which is as follows:

“Do the provisions of Chapter 319 of the Acts of 1935 apply to repair contracts such as a contract for the repair of a roof or a maintenance contract such as the painting of the interior walls of a public building or do the provisions of the Act apply to construction contracts only?”

Chapter 319, Section 1 of the Acts of 1935, the same being Burns' Indiana Statutes Annotated (1951 Repl.), Section 53-301, provides in part as follows:

“Any firm, individual, partnership or corporation which is hereafter awarded a contract by this state, or by any political subdivision thereof, or by a municipal corporation, for the construction of any public work, and any sub-contractor thereon, shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the prevailing scale of wages being paid in the immediate locality for such class of work as hereinafter to be determined.
* * *”

Section 4 of this Act, the same being Burns' Indiana Statutes Annotated (1951 Repl.), Section 53-304, defines the term “public work” as follows:

“The term ‘public work’ shall be construed to include any public building, highway, street, alley, bridge, sewer, drain, improvement or any other work of any nature or character whatsoever which is paid for out of public funds, excepting as herein otherwise provided.”
(Our emphasis.)

The title to this Act reads as follows:

“An act prescribing the minimum wages which shall be paid to persons who are employed by contractors or sub-contractors who have been awarded *contracts for the performance of public work, providing a method for determining prevailing wages and prescribing penalties for the violation thereof.*”

In construing statutes a court should look to both the title and the body of the Act and the title should be considered in construing the body and the whole Act should be construed together.

Cyrus v. State (1924), 195 Ind. 346, 145 N. E. 497.

It is apparent that the title of this Act is broad enough to cover contracts for all classes of public work such as construction, reconstruction, repair, maintenance, *et cetera*.

As stated above, the body of the Act defines public work as including any public building, highway, street, alley, bridge, sewer, drain, improvement *or any other work of any nature or character whatsoever which is paid for out of public funds.*

Where a statute defines words or terms used therein, no wider or different meaning can be given them by any rule of legal construction.

Fahnestock v. State (1885), 102 Ind. 156, 1 N. E. 372.

The Supreme Court of Indiana in the case of Bell *et al.* v. Maish, Treasurer *et al.* (1894), 137 Ind. 226, 36 N. E. 359, in construing comparable legislation, Chapter 44 of the Acts of 1869 (Spec. Sess.), the same being Burns' Indiana Statutes Annotated (1951 Repl.), Section 55-301 *et seq.* said:

“Reconstruction is but a form of construction,—a construction again of what had first been constructed.”

This case has been cited with approval in Swigart v. Baker (1913), 229 U. S. 187, 33 S. Ct. 646, 57 L. Ed. 1146.

Further, where the language of a statute reasonably permits a construction which will avoid a result running counter

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to the obvious general spirit and purpose thereof, the form of construction should be adopted.

Dublin v. State *ex rel.* Kirkpatrick (1926), 198 Ind. 164, 152 N. E. 812;

State *ex rel.* Clark v. Stout (1934), 206 Ind. 58, 187 N. E. 267.

Statutes should be so construed as to give effect to the purpose intended to be accomplished by their enactment.

Smith v. State *ex rel.* Ross (1930), 202 Ind. 185, 172 N. E. 911;

State *ex rel.* Baker v. Grange (1929), 200 Ind. 506, 165 N. E. 239.

In view of the foregoing I believe the class of contracts about which you inquire was intended to be and is included within the foregoing definition of "public work."

I would also call your attention to the fact that said Act does not itself require the award of a contract but applies only to situations where the law requires a contract to be let. It does not apply to work done by the state or its political subdivisions by its own employees. See Chapter 4 of the Acts of 1953 as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Sections 53-101 to 53-113.

It is therefore my opinion that Chapter 319 of the Acts of 1935, above, applies to those contracts for the repair of a roof or a maintenance contract such as painting the interior or walls of a public building which are required by law to be awarded by contract.