

PUBLIC BUILDING:

Bus station is public building
within meaning of Sections 320.070
and 320.080

July 26, 1951



Honorable George Henry
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads:

"A complaint has been registered in my office of an alleged violation of Section 320.070. The building involved in this particular complaint is a new bus station which is being erected and on which the doors have been hung to open inward. My question on which I would like the opinion of your office is does the language 'all other public buildings' set forth in said Section 320.070, Revised Statutes of Missouri, 1949, and the penal section which follows apply to bus stations, cafes, stores, and like buildings."

The statutes you require this department to construe are Sections 320.070 and 320.080, RSMo 1949. Said sections read:

"All the doors for ingress and egress to and from all public schoolhouses and all other public buildings, and also of all theaters, assembly rooms, halls, churches, factories with more than twenty employees, and of all other buildings or places of public resort whatever, where people are wont to assemble, excepting schoolhouses and churches of one room and on the ground floor, which shall hereafter be erected, together with all those heretofore erected, and which are still in use as such public buildings or places of resort, shall be so hung as to open outwardly from the audience

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rooms, halls or workshops of such buildings or places; provided, that said doors may be hung on double-jointed hinges so as to open with equal ease outwardly and inwardly."

"Any architect, superintendent or other person or persons or body corporate, who may have charge of the erection, or may have the control or custody of any of the said buildings or places of resort mentioned in section 320.070 who shall refuse or fail to comply with the provisions of said section within six months from the passage of this law, in case of said buildings or places aforesaid which have been heretofore erected, and before the completion or occupation for said purposes of any of said buildings or places now in process of erection, shall, on proof of such refusal or failure before any court of competent jurisdiction, be adjudged to be guilty of a misdemeanor, and be punished by a fine of not less than one hundred nor more than one thousand dollars, which said fine shall be collected as is now provided by law for the collection of fines in such cases, and when collected shall be paid into and become a part of the public school fund of the county, city or incorporated town in which said misdemeanor was committed."

The particular question is as follows: Does a new bus station now being erected come within the meaning of "other public buildings" as contained in the foregoing provisions? If so, then the doors of such building must comply with the provisions of the foregoing statutes, or certain persons responsible for such construction will be subject to penalty and prosecution as shown in Section 320.080, supra.

Strange as it may seem, we are unable to find any Missouri appellate court decisions construing these particular statutes, notwithstanding that they apply to many buildings and that said statutes have been in effect for many years. However, there are foreign court decisions construing their respective statutes which are similar and analogous to our laws. So, we shall refer to only a few of these cases.

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In *Miller v. McKinnon*, 124 P. (2d) 34, the Supreme Court of California construed Section 4041.18 of the Political Code which reads in part:

"Whenever the cost of construction of any wharf, chute, or other shipping facilities, or of any hospital, almshouse, courthouse, jail, historical museum, aquarium, county free library building, branch library building, art gallery, art institute, exposition building or buildings, stadium or other public buildings, or the cost of any repairs thereto or furnishing thereof shall exceed the sum of five hundred dollars, such work shall be done by contract, and any contract therefor shall be void unless the same shall be let as hereinafter provided."

The court, in construing the foregoing statute, held that the words "other public buildings" contained therein did not limit it to places where the public assembles or only to structures of the character of those in the preceding list, but that the whole policy of the act was to require competitive bidding when the county engaged in repair work exceeding \$300.00. In so holding, the court said at l.c. 40:

" * * * The terms 'other public buildings, or the cost of any repairs thereto or furnishing thereof' appearing in section 4041.18 are sufficiently comprehensive to include the bunkers, tunnel, hoists, power line, conveyor and tower.

"Plaintiff alleged that the various items were attached to and a part of the structures and buildings at the rock quarry. The term 'public buildings' is obviously not limited to places where the public assembles. A jail would clearly be a public building; yet it is not ordinarily a place of public assemblies. See *Swasey v. County of Shasta*, 141 Cal. 392, 74 P. 1031. For illustration it has been held that the term building includes a sandhopper, *Wilbur v. City of Newton*, 307 Mass. 191, 29 N.E. 2d 689; a spur track, *Saulsberry v. North American Refractories Co.*, 278 Ky. 808, 129 S.W. 2d 525; and that the terms 'structures' and 'public buildings' are

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synonymous, *Saulsberry v. North American Refractories Co.*, supra. There is no policy of law which requires that a restricted or narrow meaning be given to the term building as here used in the statute. The manifest policy of the law is to require competitive bidding when the county engages in the construction or repair of improvements costing more than the named amount."

In the instant case, we think the primary motive for enacting Sections 320.070 and 320.080, supra, was to provide a safety measure for the general public who may be at the present time in such building and that the Legislature, in enacting such laws, was not so much impressed with the particular kind of building as they were for the safety of the general public. Certainly a bus station is such a public building where large crowds frequently assemble.

The words "public buildings" have been defined to include most any place where the public congregates or assembles for any particular purpose. For instance, the appellate courts of New York have decided that a building containing 53 apartments in New York is a public building. In *Pollard v. Trivia Building Corporation*, 50 N.E. (2d) 287, 1.c. 289, 291 N.Y. 19, the court in so holding said:

"Section 202 of the Labor Law, as it was in force at the time of the accident, provided that 'on every public building where the windows are cleaned from the outside, the owner, lessee, agent, manager or superintendent in charge of such building shall provide, equip and maintain approved safety devices on all windows of such building. The owner, lessee, agent, manager or superintendent in charge of any such public building shall not require, permit, suffer or allow any window in such building to be cleaned from the outside unless means are provided to enable such work to be done in a safe manner in conformity with the requirements of this chapter and the rules of the board of standards and appeals. * * * The board of standards and appeals may make rules supplemental to this section by designating safety devices of an approved type and strength to be installed on public

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buildings or to be worn by window cleaners or both, but the absence of any such rules shall not relieve any person from the responsibility placed upon him by this section.' (Added by L. 1930, ch. 605, and amended.) The building on which the accident occurred was a 'public building' within the meaning of the statute (Labor Law, §2, subd. 13). * * * *"

In *Homin v. Cleveland & Whitehill Corporation*, 9 N.Y.S. (2d) 454, l.c. 457, the court held that it was conceded under Section 202 of the Labor Law that a factory is a public building. In so holding, the court said:

"The proof established that the rules of the Industrial Board made pursuant to section 202 of the Labor Law required a device known as an anchor to be installed on the side frames of the windows of a public building. It was conceded that a factory is a 'public building.'"

In *Burling v. Schroeder Hotel Co.*, 291 N.W. 810, l.c. 813, the court held that under Section 101.01, subsection (12), a hotel is a public building. That particular subsection reads:

"The term 'public building' as used in sections 101.01 ot 101.29 shall mean and include any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public, or three or four tenants."

In so holding, the court said:

"Consequently, as the issues were submitted under the safe place statutes, and the provisions thereof are applicable to the stairway in question because the defendant's hotel is a 'public building' under the definition of that term in subsec. (12) of sec. 101.01, Stats., the facts found by the jury render the defendant liable to plaintiff for the damages which he sustained excepting in so far as the amount of his recovery is to be diminished by reason of his contributory negligence."

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In Sharp v. Police Jury of Parish of East Baton Rouge, 193 So. 594, l.c. 596, the court defined public building as used in the Constitution of 1921 and then quoted approvingly from 50 Corpus Juris, and said:

"'A public building in the sense anticipated by Paragraph 14(e) of Article 14 of the Constitution of 1921 has been defined to be a building owned or controled and held by the public authorities for public use. Brown v. State, 16 Tex. App. 245; McIntyre v. (Board of Com'rs of) El Paso County, 15 Colo. App. 78, 61 P. 237. A bridge has even been defined to be a public building. Arnell v. London, etc. R. Co., 12 C.B. 697, 74 E.C.L. 697.

"'In 50 Corpus Juris, page 850 et seq., we find the following:

"'"Public Building. In a narrow sense a 'public building' is a building erected and owned by state, county or municipal authorities; a building owned or controlled and held by the public authorities for public use; a building belonging to, or used by, the public for the transaction of public or quasi-public business. As so defined the term 'public building' includes a high school building, a hospital, a jail, a town calaboose, or a common schoolhouse. ""In a broader sense it is defined as a building, which, although privately owned, may be fairly deemed to promote a public purpose or to subserve a public use; a building where the public congregates in considerable numbers either for amusement or for other purposes. As so defined the term 'public building' includes a camp meeting building.

"'"As used in statutes. There is no hard and fast rule with respect to what may be included within the term 'public building' and where the term is unaccompanied by words of explanation or limitation, whether it includes a particular building depends upon the general scheme or object of the statute."'"

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In *Kezar v. Northern States Power Co.*, 16 N.W. (2d) 364, l.c. 365, the Supreme Court of Wisconsin again construing Section 101.01, subsection (12) of the Laws of Wisconsin, held that the building occupied by the wife of the plaintiff for a dress shop was a public building, and in so holding, said:

"Plaintiff claims there was ample proof on the trial to establish that the character and use of the building, including the rear exit door and outdoor steps, were such as to constitute the building a 'public building' under the definition in sec. 101.01 (12), Stats.; and that plaintiff's status while there when he was injured was such that he was a 'frequenter' under the definition in sec. 101.01(5), Stats. Upon the submittal of those issues for a special verdict, the jury answered the questions in favor of plaintiff and the findings were sustained by the court on motions after verdict. On the other hand, defendant contends plaintiff was a trespasser, and therefore the jury and court erred in finding that he was a frequenter. A review of all the evidence material in considering the issues involved discloses that the jury's findings in those respects were clearly well warranted by proof which is virtually undisputed, and that no useful purpose will be served by further discussion thereof."

In view of the foregoing definitions and decisions of the various courts in other states construing the words "public building", certainly we must hold that the new bus station now under construction where many people assemble is a public building, especially in view of the fact that this is a safety measure for the people of this state, and that since such bus station is a public building as mentioned in Section 320.070, supra, the doors of said building must be constructed to conform to said statute.

CONCLUSION

Therefore, it is the opinion of this department that a bus station is a public building under Section 320.070, RSMo 1949, and that the building must be so constructed as to conform to the provisions of said statute.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General