

MAINTENANCE:
METROPOLITAN ZOOLOGICAL PARK
AND MUSEUM DISTRICT:

In regard to an indoor
swimming complex, the term
"maintenance" as used in
Section 184.352(9), RSMo

Supp. 1990, includes janitorial personnel, security personnel
used to safeguard the facility and equipment, swimming pool
chemicals and repair equipment, electricity to run motors and
pumps, and utility costs to dehumidify and heat the indoor
swimming complex.

September 23, 1991

OPINION NO. 181-91

The Honorable Franc Flotron
Senator, District 7
State Capitol Building, Room 427
Jefferson City, Missouri 65101

Dear Senator Flotron:

This opinion is in response to your question asking:

Re: RSMo 184.352(9) "Recreation and amateur sports
subdistrict"

Do the following expenditures constitute maintenance:

1. Janitorial and security manpower at
indoor swimming complex?
2. Commodities such as swimming pool
chemicals and repair equipment at
indoor swimming complex?
3. Electricity to run motors and pumps at
indoor swimming complex?
4. Utility costs to dehumidify and heat
indoor swimming complex?

Section 184.352, RSMo Supp. 1990, provides in part:

184.352. Definitions.--The
following terms whenever used or referred
to in sections 184.350 to 184.384 shall
unless a different intent clearly appears

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from the context be construed to have the following meaning:

* * *

(9) "Recreation and amateur sports subdistrict" shall consist of a political subdistrict which shall provide for and assist in the planning, development, financing, maintenance, improvement and construction of facilities and venues to be publicly owned and operated by political subdivisions, public school districts, universities and colleges, or not for profit corporations chartered to attract, promote and manage major national and international amateur sports events, competitions and programs for the use of the general public. Such subdistrict shall structure its procedures for procuring supplies, services and construction to achieve the result that a minimum of twenty percent in the aggregate of the total dollar value of annual procurements is made directly or indirectly from certified socially and economically disadvantaged small business concerns; [Emphasis added.]

* * *

Section 184.353.5, RSMo Supp. 1990, provides for the board of directors of any metropolitan zoological park and museum district established pursuant to Sections 184.350 to 184.384, RSMo, to obtain authorization from the voters to establish a recreation and amateur sports subdistrict. If approved by the voters, the subdistrict is authorized "to establish a tax rate not in excess of four cents on each \$100 of assessed valuation of taxable property within the district for a period not to exceed nine years."

While "maintenance" has been defined in other contexts, e.g., see, Sections 227.210 and 290.210(4), RSMo 1986, the legislature has provided no definition for the term as used in Section 184.352(9), RSMo Supp. 1990. Therefore, we must construe this word in the context of Sections 184.350 to 184.384, RSMo. The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe

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Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

In Attorney General Opinion Letter No. 28-90, a copy of which is enclosed, we interpreted the word "maintenance" in the context of Section 67.550.3, RSMo Supp. 1989, and determined it "includes expenditures for the purposes of upkeep and to keep the facilities and buildings in a state of good repair." Id. at 3. See also Attorney General Opinion No. 14-88, a copy of which is enclosed.

Webster's New World Dictionary, Second College Edition, 1980 defines the word "maintenance" as:

a maintaining or being maintained; upkeep, support, . . . the work of keeping a building, machinery, etc. in a state of good repair. . . .

Id. at 854. The same source defines "maintain" as:

1. to keep or keep up; continue in or with; carry on 2. a) to keep in existence or continuance . . . b) to keep in a certain condition or position, esp. of efficiency, good repair, etc.; preserve

Id.

Section 184.352(9), RSMo Supp. 1990, provides for "maintenance" of certain facilities. You have listed four types of activities and ask if these would constitute "maintenance" as the term is used in Section 184.352(9), RSMo Supp. 1990.

Your first question concerns janitorial and security manpower at an indoor swimming complex. We believe there is no question that janitorial personnel is an essential element of keeping a facility in a state of good repair. To the extent that security personnel is used to safeguard the facility and equipment, this would also be an element of maintenance.

Your second question addresses swimming pool chemicals and repair equipment. We assume the chemicals to which you refer are used in cleaning the pool and treating water in the pool. Such chemicals, like repair equipment, are necessary to keep the pool in good condition and, therefore, would constitute maintenance expenses.

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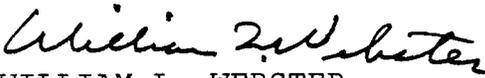
You next ask about electricity to run motors and pumps at an indoor swimming complex. Again, we assume this is part of the operation of treating water in the pool by filtering and purifying the supply. Such would fall within the definition of maintenance.

Finally, you ask about utility costs to dehumidify and heat an indoor swimming complex. Such activities we conclude prevent deterioration of the facility that might be caused by excess humidity. This also would fall within the definition of "maintenance" as "to keep in a certain condition or position, esp. of efficiency, good repair, etc."

CONCLUSION

It is the opinion of this office that in regard to an indoor swimming complex, the term "maintenance" as used in Section 184.352(9), RSMo Supp. 1990, includes janitorial personnel, security personnel used to safeguard the facility and equipment, swimming pool chemicals and repair equipment, electricity to run motors and pumps, and utility costs to dehumidify and heat the indoor swimming complex.

Very truly yours,


WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 28-90
Opinion No. 14-88