

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 66

CONTRACTS - Application of public construction contract law to restoration of public property operated and maintained by private groups;
HISTORICAL SOCIETY - Responsibility for maintenance, restoration, and preservation of Daly Mansion;
PROPERTY, PUBLIC - Application of public construction contract law to restoration of public property operated and maintained by private groups;
PROPERTY, STATE - Application of public construction contract law to restoration of public property operated and maintained by private groups;
PUBLIC BUILDINGS - Legislative approval of restoration of Daly Mansion;
MONTANA CODE ANNOTATED - Sections 18-2-101 to 18-2-103, 72-16-445 to 72-16-450;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 42 (1987).

HELD: Restoration and repair of the state-owned Daly Mansion are subject to sections 18-2-102 and 18-2-103, MCA, regarding public construction contracts.

18 February 1988

Robert Archibald, Director
Montana Historical Society
225 North Roberts
Helena MT 59620-9990

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Dear Mr. Archibald:

You have requested my opinion regarding the following issue:

Do sections 18-2-102 and 18-2-103, MCA, regarding public construction contracts, apply to restoration and repair of the Daly Mansion?

The Marcus Daly Mansion and the 40 acres on which it is located near Hamilton, Montana, were deeded to the Montana Historical Society on December 31, 1986. The property was transferred pursuant to sections 72-16-445 to 450, MCA, which allow transfers of property with historical significance to the Historical Society as in-kind payment of inheritance and estate taxes.

According to an agreement entered into by the Historical Society and two local private groups, the two private groups have responsibility for the operation, stabilization, and restoration of the Mansion. The agreement also provides that the two groups must maintain a working relationship with the Historical Society and must accept direction from the Historical Society.

The Historical Society has the duty to maintain, repair, and preserve the Mansion as a historical place. See § 22-3-101, MCA. Even though it may contract with private parties for the fulfillment of some of these duties, the Historical Society retains power and responsibility with regard to the property. See 42 Op. Att'y Gen. No. 42 (1987). Thus, the Historical Society must arguably approve any contract for restoration or repair of the property.

Because the Daly Mansion is owned by the Historical Society, it is a "building" within the definition found in section 18-2-101, MCA. Any restoration or repair of the Mansion would be defined as "construction" according to section 18-2-101(3), MCA, which states:

"[C]onstruction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling[.]

See also Goodover v. Department of Administration, 201 Mont. 92, 651 P.2d 1005 (1982).

Sections 18-2-102 and 18-2-103, MCA, state, in part:

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18-2-102. Authority to construct buildings.

(1) Except as provided in subsection (2) of this section, a building costing more than \$25,000 may not be constructed without the consent of the legislature. When a building costing more than \$25,000 is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

....

18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$25,000, the department of administration shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount. However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners.

(d) review and approve all change orders up to \$5,000. Any other change order must be with the consent of the board of examiners. The board of examiners shall act within 14 working days after processing completion by the department.

(e) accept the building when completed according to accepted plans and specifications.

It is suggested that restoration and repair of the Daly Mansion need not be approved by the Legislature nor supervised by the Department of Administration because the Mansion project is being funded and operated by local private groups. As stated above, however, the Mansion is state property. Sections 18-2-102 and 18-2-103, MCA, apply to all construction of public buildings which costs over \$25,000. If the funding need

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not come from a legislative appropriation, consent of the Legislature may take the form of a joint resolution. § 18-2-102(1), MCA.

As stated above, the Daly Mansion property was transferred to the state pursuant to sections 72-16-445 to 450, MCA. There is no indication in those statutes that the Legislature intended to except property so transferred from the requirements of sections 18-2-102 and 18-2-103, MCA.

THEREFORE, IT IS MY OPINION:

Restoration and repair of the state-owned Daly Mansion are subject to sections 18-2-102 and 18-2-103, MCA, regarding public construction contracts.

Very truly yours,

MIKE GREELY
Attorney General