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June 4, 1975

Asa A. Gordon, Deputy Commissioner

Educational & Cultural Services

John W. Benoit, Jr., Deputy

Attorney General

Approval of Change Orders in School Construction Plans

This is a reply to your memorandum of March 10, 1975, posing two questions.

"1. May the local governing body (school officials) approve change orders without coming back to the State Board of Education provided that the total funds expended on the project remain within the limitation set by the State Board in the first instance?" Yes, subject to the Statutory requirement the changes comply with 20 M.R.S.A. § 3623. (Parenthesis mine)

"2. May the local board initiate change orders without coming back to the State Board outside of the approved plans and specifications provided that they do not exceed the approved cost of the project plus 10%?" Yes, subject again to 20 M.R.S.A. § 3623.

Your memorandum sets forth the following factual material:

"When an administrative unit develops plans for school construction and presents those plans to the State Board of Education, it is assumed by the Board that the building will be constructed in accordance with the plans that have been submitted. Section 3460 of Title 20 contains a paragraph which says, in effect, that when a plan has been approved under the alternate method of payment of funds that the unit may not exceed the amount approved by the State Board by more than 10% without resubmission of the project application to the Board."

The 10% limitation provision to which your memorandum refers is:

"In accordance with the provision of law that the alternate method may not be authorized by the State Board of Education unless funds then have been appropriated in an amount sufficient to meet the total estimated amount of state aid estimated to be payable on the project, no

local unit, without resubmission of the project application to the board, may increase by more than 10% the estimated project costs as submitted to the State Board of Education in the original application for approval of the project. In the absence of such resubmittal and the supplemental approval of the additional project costs, the State shall not be liable for construction aid on that part of the project cost which exceeds by more than 10% the original approved project cost." 20 M.R.S.A. § 3460.

The 10% limitation in the above-quoted statute refers to excess costs of the project; without expressing whether the excess costs resulted from change orders or not. It is possible, of course, for the 10% limitation to become operative for reasons other than change orders, due to the fact the Board of Education's approval, in the first instance, was of estimated project costs; something susceptible to change.

Your questions are answered by 20 M.R.S.A. § 3623, as well as by the 10% limitation provision, to the extent those provisions are applicable to the facts. If a change order results in an increase of more than 10% of the estimated project costs, State Board supplemental approval of that increase must be obtained. If supplementary approval is not obtained, the last sentence of the sixth paragraph of section 3460, at the very least, relieves the State from any obligation to pay for construction aid on that part of the project cost which exceeds by more than 10% the original approved project cost. If, on the other hand, a change order does not involve such an increase in costs, but rather is an alteration which does not comply with approved plans, the Commissioner of Education is required to notify local school officials of the changes required to be made in order to bring compliance. 20 M.R.S.A. § 3623. In light of the provisions of § 3623, local school officials would be well advised to obtain prior approval of the Commissioner of Education respecting change orders regarding heating, lighting, ventilating and hygienic conditions.

JWBJr/mf