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ATTORNEY GENERAL OPINION NO. 91- 122

The Honorable Bob J. Mead  
State Representative, 112th District  
P.O. Box 224  
Pawnee Rock, Kansas 67567

Re: Housing and Urban Development -- Office of  
Assistant Secretary of Community Planning,  
Development, HUD -- Eligible Activities;  
Ineligible Activities; Community Development Block  
Grant Program; Ottawa University's Science Hall  
Renovation

Synopsis: The renovation of the science hall and the listed  
improvements are an economic development project  
pursuant to 24 C.F.R. § 570.203. Therefore, these  
renovations are eligible community development  
block grant activities. Cited herein: 24 C.F.R.  
§§ 570 et seq.

\* \* \*

Dear Representative Mead:

As state representative for the 112th district, you have  
requested an opinion on whether the renovation of the Ward  
science hall on Ottawa University's campus is an eligible  
activity for a community development block grant (CDBG).  
Specifically, you ask whether the following activities are  
eligible activities: heating and air conditioning, fire  
stair, handicapped elevator, windows, architectural and  
engineering fees, and administration.

Ottawa University is a "private liberal arts college affiliated with the American Baptist Churches." (See Community Block Grant Application, Application Summary form p. 2). The university is requesting funding for immediate repairs to the Ward science hall as part of an "ongoing effort to remain a vital economic force in the city of Ottawa." (Application Summary, p. 2).

The general policies for determining eligible activities for a CDBG are set forth in 24 C.F.R. § 570.200 (1990). Pursuant to 24 C.F.R. § 570.200(i), the activity must comply with § 105 of the act, which provides that,

"Activities assisted under this title may include only . . .

. . . .

"(17) provisions of assistance to private, for profit entities, when the assistance is necessary or appropriate to carry out an economic development project."

Furthermore, 24 C.F.R. § 570.203 (1990) allows programs which are deemed to be an economic development project to have greater latitude in determining how the funds shall be spent.

"A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

. . . .

"(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a)." (Emphasis added).

The plain language of 24 C.F.R. § 570.203(b) (1990) allows "any activity" as long as it is necessary or appropriate for an economic development project and it is not listed as an ineligible activity.

Since Ottawa University is using the CDBG funds in an "effort to remain a vital economic force in the city of Ottawa," the project appears to constitute a special economic development project. Furthermore, pursuant to 24 C.F.R. § 570.203(b) (1990), any activity will be eligible as long as it is not an ineligible activity described in 24 C.F.R. § 570.207(a) (1990).

The fact remains that Ottawa University is affiliated with the Baptist churches. As a general rule:

"CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities." (Emphasis added). 24 C.F.R. § 570.200(j).

Since the university is only affiliated with the Baptist churches, the university does not constitute a "primarily religious entity." Even if it would constitute a primarily religious entity, the funds could be provided pursuant to 24 C.F.R. § 570.200(j)(3) (1990), which states that:

"(3) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity which enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:

"(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

"(ii) It will not discriminate against any person applying for such public services on the basis of religion and will

not limit such services or give preference to persons on the basis of religion;

"(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;. . . ."

Also, in the past schools and educational facilities have been listed as "other facilities" constituting "public works, facilities and sites" and consequently an ineligible activity or a CDBG. See 24 C.F.R. § 570.207(a)(2)(ii) (1983). This provision has been omitted from 24 C.F.R. § 570.207 (1990), pertaining to ineligible activities. "Ordinarily, courts presume that, by changing the language of a statute, the legislature intends either to clarify its meaning or to change its effect." Watkins v. Hartsock, 245 Kan. 756, 759 (1989) citing Board of Education of U.S.D. 512 v. Vic Regnier Buildings, Inc., 231 Kan. 731 (1982). Therefore, the listing of a school or educational activity as an ineligible activity is no longer effective, and the building renovation is currently an eligible activity.

The heating and air conditioning would be an eligible activity. This is set out by the statement that eligible activities encompass "improvements to include the efficient use of energy in structures through such means as . . . replacement of heating and cooling equipment." 24 C.F.R. § 570.202(b)(4) (1990).

This provision also allows the installation of "storm windows." Therefore, the heating and air conditioning and the windows, if they are storm windows, would be eligible activities for CDBG.

The fire stair is eligible for two reasons. Primarily, 24 C.F.R. § 570.203 (1990) allows any activity as long as it is not listed as an ineligible activity under 24 C.F.R. § 570.207(a) (1990). Secondly, 24 C.F.R. § 570.207(b)(1)(ii) (1990) specifically provides that,

"Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 207.201(c)."

The handicap elevator is an eligible activity under several provisions. Both 24 C.F.R. § 570.200(a)(1) (1990), which refers to § 105(a)(5) of that act, and 24 C.F.R. § 202(b)(4) allow removal of barriers which restrict the mobility and accessibility of elderly or handicapped persons.

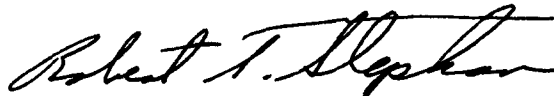
Lastly, architectural and engineering fees are eligible pursuant to 24 C.F.R. § 570.202(b)(2) (1990) which allows "[l]abor, materials, and other costs of rehabilitation of properties." Also, reasonable administrative costs are allowed pursuant to 24 C.F.R. § 570.206.

However, 24 C.F.R. § 570.200(g) (1990) does establish a limit on the amount of allowable administrative costs.

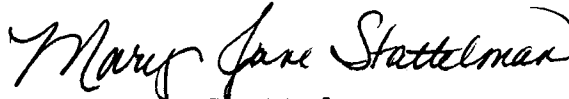
"No more than 20 percent of the sum of any grant plus program income received during the program year . . . shall be expended for planning and program administrative costs. . . ."

In conclusion, the renovation of the science hall and the listed improvements are a economic development project pursuant to 24 C.F.R. § 570.203 (1990). Therefore, they are eligible activities for a CDBG.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma  
Assistant Attorney General

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