



MEMORANDUM

TO: AEA Chief Administrators
AEA Business Officers

FROM: Jason E. Glass
DATE: June 6, 2011

RE: Use of Public Funds to Operate and Maintain AEA Facilities

The purpose of this memorandum is to address – *for Area Education Agencies (AEAs) only* – the implementation of Iowa Code section 273.3, subsection 7, which states as follows:

273.3 Duties and powers of area education agency board.
The board in carrying out the provisions of section 273.2 shall:

...

7. Be authorized to lease, purchase, or lease-purchase, subject to the approval of the state board of education or its designee and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten years and with an annual cost of less than twenty-five thousand dollars does not require the approval of the state board. The state board shall not approve a lease, purchase, or lease-purchase until the state board is satisfied by investigation that public school corporations within the area do not have suitable facilities available. ...

Unlike LEAs, AEAs do not have either a Physical Plant and Equipment Levy or a Capital Project fund. Therefore, the distinction between “repairs” and “maintenance” that applies for LEAs cannot be applied blindly to AEAs. As the Iowa Attorney General has noted,¹ “maintenance” for LEAs refers primarily to minor, routine work performed primarily by LEA custodial or maintenance staff, and “repairs” refers to the more extensive reconstruction, improvement, remodeling, or additions to existing facilities, as well as to expenditures for energy conservation. *This memorandum changes nothing regarding repairs vs. maintenance for LEAs.*

Thus, AEA boards of directors have authority from section 273.3(7) to do any of the following, subject to Department approval:

1. Lease, purchase, or lease-purchase facilities and buildings necessary to provide authorized programs and services;
2. Accept donations of facilities and buildings;
3. Operate and maintain facilities and buildings.

¹ See OAG 86-8-5.

The legislative intent that the Department act as oversight when AEA's *acquire* facilities or buildings has a twofold purpose: (1) to ensure that AEA's are not ignoring facilities or buildings available from an LEA within the AEA's boundaries and (2) to ensure that AEA's are not seeking to acquire a facility or building that would better serve the relevant community as a source of income and/or property taxes.

Under general business practices, a business may acquire an already-existing facility via a lease, purchase, or lease-purchase from another entity. When no suitable existing facility is available, general business practices permit new construction. Repairs or remodeling of a facility owned by another entity are funded by the other entity and passed along to the lessee via higher lease payments, while repairs or remodeling of a facility constructed or owned by the business would generally be financed by a loan or by funds on hand.

Applying the above paragraph to AEA's, it is clear that Iowa Code chapter 273 envisions acquisition by AEA's of suitable facilities by lease, purchase or lease-purchase (existing facility owned by another entity) or construction (new facility). The financing mechanism for AEA's to construct or repair is not described in chapter 273. To honor legislative intent and to recognize practical realities, the Department believes that it is appropriate that the AEA's follow general business practices described above regarding facilities to the extent such practices are lawful for AEA's.

The Department will continue to review requests to lease, purchase, lease-purchase, construct, or repair facilities and buildings, but will not require that construction or repairs be financed via lease-purchases. Routine maintenance will continue to be exempt from Department review.