

OPINION NO. 84-035**Syllabus:**

When a county agricultural society which receives public funds agrees to have a private contractor construct a facility, the purchase or lease price of which is paid wholly or partly with public funds, and such facility is a public improvement within the meaning of R.C. 4115.03(C), then the laborers, workmen and mechanics employed on such project must be paid at prevailing rates of wages if the society agrees to purchase the completed facility or agrees within six months after the completion of construction to lease the facility.

To: Dale L. Locker, Director, Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1984

I have before me your request for my opinion concerning the applicability of Ohio's prevailing wage law to the construction of a facility on property that a county agricultural society owns, or that is owned by a county but under the management and control of such a society, or that is leased by such society, and is used to hold county agricultural fairs.

R.C. 4115.10(A) prohibits payment of less than the prevailing rate of wages in the following terms:

No person, firm, corporation, or public authority that constructs a public improvement with its own forces the total overall project cost of which is fairly estimated to be more than four thousand dollars shall violate the wage provisions of sections 4115.03 to 4115.06 of the Revised Code, or suffer, permit, or require any employee to work for less than the rate of wages so fixed, or violate the provisions of section 4115.07 of the Revised Code. (Emphasis added.)

See R.C. 4115.05 ("[e]very contract for a public work shall contain a provision that each laborer, workman, or mechanic, employed by such contractor, subcontractor, or other person about or upon such public work, shall be paid the prevailing rate of wages provided in this section"). The pertinent terms used in R.C. 4115.10(A) are defined under R.C. 4115.03 which provides, in part:

As used in sections 4115.03 to 4115.16 of the Revised Code:

(A) "Public authority" means any officer, board, or commission of the state, or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds and said sections apply to expenditures of such institutions made in whole or in part from public funds.

(B) "Construction" means any construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decorating, of any public improvement the total overall project cost of which is fairly estimated to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.

(C) "Public improvement" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority of the state or any political subdivision thereof or by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof. When a public authority rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by a public authority, shall be a "public improvement" as defined herein. (Emphasis added.)

Thus, in order for prevailing wage standards to apply, a public improvement must be constructed by or for a public authority within the meaning of R.C. 4115.03, or a public authority must agree to rent or lease a newly constructed structure within six months after construction is completed.

It is my understanding that your question concerns a situation in which a county agricultural society would agree to have a private contractor construct a facility on property which the society owns or leases, or which it manages and controls pursuant to R.C. 1711.31.¹ Under such agreement the society would purchase or lease the constructed facility. As your request does not indicate the nature of the proposed facility, I will assume that it is either one of the improvements specifically enumerated under R.C. 4115.03(C), or falls within the catch-all category of "all other structures or works constructed by . . . any person who, pursuant to a contract with a public authority, constructs any structure for a public authority." I further understand that the overall project cost of the construction in question is estimated to be in excess of four thousand dollars, and the purchase or lease price for the completed project is to be paid wholly or partly with public funds.

In order to ascertain whether the prevailing rates of wages must be paid to laborers, workmen and mechanics employed in the construction described above, one must determine whether a county agricultural society is a public authority within the meaning of R.C. 4115.03(A). A county agricultural society may be formed pursuant to R.C. 1711.01. The purposes of such a society may be gleaned from the various provisions of R.C. Chapter 1711. See, e.g., R.C. 1711.03 (a society may carry on junior club work); R.C. 1711.04 (a society "may perform any acts best calculated to promote the agricultural interests and household manufacturing interests of the counties concerned and of the state"); R.C. 1711.15 (a county may improve a site which a society has purchased or leased for the purpose of holding

¹ You have indicated that the proposed construction could occur under any one of these circumstances. However, the manner in which a county agricultural society controls property upon which the construction will be undertaken, whether by ownership, lease, or pursuant to R.C. 1711.31, does not affect this analysis regarding the applicability of the prevailing wage laws.

fairs). The court in State ex rel. Leaverton v. Kearns, 104 Ohio St. 550, 136 N.E. 217 (1922) examined the nature of such a society in order to determine whether it was a proper recipient of public funds from the county and state. The court therein held that such financial assistance was "in aid of a public institution designed for public instruction, the advancement of learning and the cause of agriculture" and, consequently, did not violate the constitutional proscriptions regarding the lending of aid or credit to a private enterprise. Leaverton, syllabus, paragraph 2. While the Leaverton court apparently considered the agricultural fair to be a public institution, a later court, reviewing entities to which a county could properly lend it its aid or credit, described the society itself as a "public organization." Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 72, 233 N.E.2d 864, 871 (1968).

R.C. 4115.03(A) provides, in part, that an institution supported wholly or partly by public funds is a "public authority" for purposes of the prevailing wage laws. The term "institution" is not defined by the statute. One must, then, presume that the legislature intended the term to have its ordinary meaning. See Carter v. City of Youngstown, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph 1). Webster's New World Dictionary 730 (2d college ed. 1978) states, in relevant part, that an "institution" is "an organization having a social, educational, or religious purpose." Black's Law Dictionary 719 (5th ed. 1981) defines "institution" as follows: "An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational. . . ." (Emphasis added.) Consequently, it appears that a county agricultural society, which the courts recognize as an educational organization, falls within the accepted definition of an institution. A county agricultural society is, therefore, a public authority subject to the prevailing wage laws to the extent that such a society expends public funds toward the purchase or lease of a public improvement.

R.C. 4115.03(A) requires, in part, that an institution be supported wholly or partly by public funds and that such funds be expended toward the purchase or lease of a public improvement in order to meet the definition of a "public authority." A review of R.C. Chapter 1711 shows that a county agricultural society's funds may be derived from the county in which the society exists. See, e.g., R.C. 1711.15 (a board of county commissioners may improve or financially assist a society to improve a fair site that a society either owns or has leased for not less than twenty years, or a fair site which the county owns); R.C. 1711.16 ("[w]hen the control and management of a fairgrounds is in a county agricultural society, and the board of county commissioners has appropriated an amount or levied a tax for the aid of such society. . . the society, with the consent of the board, may contract for the erection or repair of buildings or otherwise improve said site. . ."); R.C. 1711.22 (under certain circumstances a board of county commissioners shall annually, at the request of a society, appropriate between fifteen hundred and two thousand dollars for the purpose of encouraging agricultural fairs). See also R.C. 3769.082 (moneys from the Ohio fairs fund of the state treasury may be distributed to a county agricultural society to be used as purse money for horse races, as well as for race track maintenance and other expenses necessary for the conduct of such races). Thus, it is apparent that a county agricultural society may be at least partly supported by public funds derived from the county or the state. As noted earlier, it is my understanding that these public funds will be used toward the purchase or long term lease² of the facility that is to be constructed. Accordingly, insofar as the proposed construction is concerned, a county agricultural society must be considered a public authority within the meaning of R.C. 4115.03(A).

² Your letter of request indicates that the agricultural society may lease the completed facilities for a long term. I note, however, that the term of a lease is not relevant to a determination as to whether the structure in question is a public improvement within the meaning of R.C. 4115.03(C). Rather, the determinative factor in this regard is whether a public authority agrees within six months of the completion of construction to lease such facility.

Based upon the foregoing, it is my opinion, and you are advised, that when a county agricultural society which receives public funds agrees to have a private contractor construct a facility, the purchase or lease price of which is paid wholly or partly with public funds, and such facility is a public improvement within the meaning of R.C. 4115.03(C), then the laborers, workmen and mechanics employed on such project must be paid at prevailing rates of wages if the society agrees to purchase the completed facility or agrees within six months after the completion of construction to lease the facility.