

**OPINION NO. 82-096****Syllabus:**

1. If a project is funded in part by the issuance of industrial development bonds and in part through private sources, all laborers and mechanics employed in the construction of the project must be paid at the prevailing rates determined in accordance with R.C. Chapter 4115, regardless of whether the industrial development bond proceeds are applied to pay construction costs.
2. Ohio's prevailing wage law, R.C. 4115.03 through 4115.16, is applicable to construction projects completed or substantially completed with private funds if industrial development bonds are

subsequently issued and the proceeds thereof are used to retire the original construction loan.

**To: Helen W. Evans, Director, Department of Industrial Relations, Columbus, Ohio**  
**By: William J. Brown, Attorney General, November 15, 1982**

I have before me your request for my opinion concerning the application of Ohio's prevailing wage law to projects funded by the issuance of industrial development bonds. Your specific questions may be stated as follows:

1. Must all laborers and mechanics be paid at prevailing rates of wages for work on a project that is partially financed by industrial development bonds even if these bond moneys are not used to pay construction costs?
2. Must the prevailing wage rate be paid to all laborers and mechanics for work performed while a project was privately funded if industrial development bonds are issued after completion of part or all of the project and the proceeds of such bonds are used to retire the original construction loan?

Ohio's prevailing wage law, set forth in R.C. 4115.03 through 4115.16, establishes predetermined wage rates and benefits for mechanics and laborers engaged in the construction of public improvements. That law is expressly made applicable to projects funded by the issuance of industrial development bonds by R.C. 4115.032, which provides in part that:

Construction on any project, facility, or project facility to which sections 122.452, 122.80, 165.031, 166.02, 1551.13, 1728.07 or 3706.042 of the Revised Code apply is hereby deemed to be construction of a public improvement within section 4115.03 of the Revised Code. All contractors and subcontractors working on such projects, facilities or project facilities shall be subject to and comply with sections 4115.03 to 4115.16 of the Revised Code. . . . (Emphasis added.)

R.C. Chapter 165 establishes the procedures and requirements for the issuance of industrial development bonds. R.C. 165.031 states:

No bonds shall be issued under this chapter unless the resolution or ordinance authorizing such issuance of bonds specifies that all wages paid to laborers and mechanics employed on such projects for which the bonds are issued shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by such project, which wages shall be determined in accordance with the requirements of Chapter 4115. of the Revised Code for determination of prevailing wage rates, provided that the requirements of this section do not apply where the federal government or any of its agencies furnished by loan or grant all or any part of the funds used in connection with such project and prescribes predetermined minimum wages to be paid to such laborers and mechanics; and provided further that should a nonpublic user beneficiary of the project undertake, as part of the project, construction to be performed by its regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of the commitment instrument undertaking to issue bonds then, in that event, the rate of pay provided under the collective bargaining agreement may be paid to such employees.

Thus, R.C. 165.031 expressly applies to all projects for which industrial development bonds are issued except federally funded projects that are subject to federal prevailing wage determinations. All construction on such projects falls subject to the prevailing wage law by virtue of R.C. 4115.032, unless expressly exempted.

Since both R.C. 4115.032 and R.C. 165.031 concern the matter of payment of prevailing wages on projects funded by the issuance of industrial development

bonds, they are in pari materia and must be construed as a single statute. Roberts v. Briscoe, 44 Ohio St. 596, 600, 10 N.E. 61, 63 (1887). Read together, these statutes require in broad, unequivocal terms that if a project for which industrial development bonds are issued, except a project financed in whole or in part with federal funds and subject to federal prevailing wage determinations, entails any construction, as defined in R.C. 4115.03(B),<sup>1</sup> then all contractors and subcontractors working on such project must pay all wages to laborers and mechanics employed on the project at the locally prevailing rates of wages for the class of work called for on the project and must otherwise comply with R.C. 4115.03 through 4115.16.<sup>2</sup>

Your first question concerns the scope of R.C. 165.031 and asks whether it applies to projects funded in part through the issuance of industrial development bonds and in part through private sources. The dispositive issue is, in my opinion, the meaning of the term "project" as used in R.C. Chapter 165.

The term "project" is defined in R.C. 165.01(H), for the purposes of R.C. Chapter 165, in the following manner:

"Project" means real or personal property, or both, including undivided and other interests therein, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an issuer, or by others in whole or in part from the proceeds of a loan made by an issuer, for industry, commerce, distribution or research and located within the boundaries of the issuer. . . . (Emphasis added.)

Thus, R.C. 165.01(H) expressly recognizes that a "project" may be only partially funded by industrial development bonds, while the remaining funds may be derived from private sources. R.C. 165.031, read together with R.C. 4115.032, requires that prevailing rates of wages be paid on all "projects for which the bonds are issued" (emphasis added). There is no exception for projects only partially funded by bond proceeds. So long as any part of the funding for the project is derived from the proceeds of a loan made by an issuer of industrial development bonds, R.C. 165.031 applies, and, pursuant to R.C. 4115.032, any construction on the project is subject to R.C. 4115.03 through 4115.16. Accordingly, it is my opinion that if a project is financed in part by the issuance of industrial development bonds and in part by private sources, all laborers and mechanics employed on the project must be paid wages at the prevailing rates determined in accordance with R.C. Chapter 4115, regardless of whether the funds derived from the issuance of industrial development bonds are applied to pay construction costs. But see note 2.

Your second question concerns the application of the prevailing wage requirements in the event that a project is completed with private financing but that industrial development bonds are issued subsequent to the completion of part or all of the project and the proceeds of such bonds are used to retire the original construction loan. As stated above, R.C. 165.031 applies to all projects for which industrial development bonds are issued, except federally funded projects that are subject to federal prevailing wage determinations, whether or not the bond proceeds directly pay construction costs. Thus, the resolution or ordinance

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<sup>1</sup>R.C. 4115.03(B) defines the term "construction" as used in R.C. 4115.03 through 4115.16 as "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."

<sup>2</sup>I note, however, that if a nonpublic user beneficiary of the project undertakes to perform any portion of the construction of the project utilizing its regular bargaining unit employees who are covered by a prior existing collective bargaining agreement, such nonpublic use beneficiary may, pursuant to R.C. 165.031, pay such employees at the rate provided in that agreement.

authorizing the issuance of bonds for all such projects must declare that all wages of laborers and mechanics employed on the project must be paid at the prevailing rates of wages for the class of work called for on the project. Neither R.C. 165.031 nor R.C. 4115.032 provides an exemption for projects that are completed or substantially completed at the time the bonds are issued.

Accordingly, it is my opinion, and you are advised, that:

1. If a project is funded in part by the issuance of industrial development bonds and in part through private sources, all laborers and mechanics employed in the construction of the project must be paid at the prevailing rates determined in accordance with R.C. Chapter 4115, regardless of whether the industrial development bond proceeds are applied to pay construction costs.
2. Ohio's prevailing wage law, R.C. Sections 4115.03 through 4115.16, is applicable to construction projects completed or substantially completed with private funds if industrial development bonds are subsequently issued and the proceeds thereof are used to retire the original construction loan.