OPINION NO. 75-077

Syllabus:

1. Contractors who are parties to contracts entered prior to September 26, 1974, are not required to provide to the prevailing wage coordinator information described in R.C. 4115.071 (Am. H.B. No. 1170, effective 9/26/74).

2. Am. H.B. No. 1171, effective 9/26/74, which amended R.C. 4115.04 and R.C. 4115.05 to require the payment of a prevailing wage based on the most recent collective bargaining agreements, does not apply to contracts entered prior to the effective date of that act.

To: Helen W. Evans, Director, Dept. Of Industrial Relations, Columbus, Ohio
By: William J. Brown, Attorney General, October 27, 1975

Your request for my opinion sets out two specific questions:

> "1. Whether contractors, who are parties to contracts entered into prior to September 26, 1974, are required to provide the information delineated in House Bill 1170 of the 110th General Assembly to the prevailing wage coordinator of the public authority.
>
> "2. Are the sections of contracts entered into prior to September 26, 1974, which establish the pay rates of laborers and mechanics at the prevailing wage at the time of contracting, now to be superseded by the increased pay rates of subsequent collective bargaining agreements, even if the contract contains no provision for the escalation of wages?"

Essentially your questions relate to one issue:

> Are Am. H.B. No. 1170 (eff. 9/26/74) and Am. H.B. No. 1171 (eff. 9/26/74) to be applied retroactively?

For the reasons set out below it is my opinion that Am.H.B. No. 1170, supra, may not be applied retroactively to require contractors, who are parties to contracts entered prior to September 26, 1974, to provide the information delineated in R.C. 4115.071 to the prevailing wage coordinator. Similarly Am. H.B. No. 1171, supra, may not be applied to contracts entered prior to the effective date of that act so as to require the payment of a prevailing wage based on the most recent collective bargaining agreements.

Am. H.B. No. 1170 enacted R.C. 4115.071 to provide in pertinent part:

> "(C) Every contractor and subcontractor

> who is subject to Chapter 4115. of the Revised Code shall, as soon as he begins performance under his contract with any contracting public authority, supply to the prevailing wage coordinator of the contracting public authority a schedule of the dates during the life of his contract with the authority on which he is required to pay wages to employees. He shall also deliver to the prevailing wage coordinator a certified copy of his payroll, within three weeks after each pay date which shall exhibit for each employee paid any wages, his name, current address, social security number, number of hours worked during each day of the pay period and the total for each week, his hourly rate of pay, his job classification, fringe payments, and deductions from his wages. The certification of each payroll shall be executed by the contractor, subcontractor, or duly appointed agent thereof and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by the contract."

Am. H.B. No. 1171 provided for adjustments in the prevailing wage due to new collective bargaining agreements. The act amended R.C. 4115.04 and R.C. 4115.05 to stipulate basically that at no time during the life of certain public contracts shall workers be paid less than the then prevailing rate of wages.

With respect to R.C. 4115.071(C), it may be noted that contractors and subcontractors are required to provide the necessary information as soon as they begin performance under their contracts. Similarly R.C. 4115.071(A), in providing for the appointment of a prevailing wage coordinator, states that the coordinator shall be designated no later than ten days before the first payment of wages is payable. Therefore, R.C. 4115.071 by its own language is inapplicable to existing contracts under which performance has already been commenced. On the contrary, this act can more reasonably be viewed as prospective in its application to only those contracts executed subsequent to the effective date of the act. This construction is consistent with R.C. 1.48, which states that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective."

By way of contrast the newly enacted provisions found in Am. H.B. No. 1171 are not necessarily applicable only to contracts entered into subsequent to the effective date of the act. The amendments to R.C. 4115.04 and R.C. 4115.05 provide for adjustments to prevailing wages to reflect new collective bargaining agreements during the life of the contract. The times and amounts of adjustments are, by their nature, matters which are determined subsequent to the execution of the contract.

However, it is also necessary to consider the effect of Article II, Section 28, Constitution of Ohio, on the application of Am. H.B. No. 1171. That clause states:

> "The General Assembly shall have no power to pass retroactive laws, or laws impairing the

> obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this State."

The above language has been held to preclude the retroactive application of laws of substantive nature as opposed to laws of a remedial nature. Kilbreath v. Rudy, 16 Ohio St. 2d 70 (1968); State, ex rel. Holdridge v. Indus. Comm., 11 Ohio St. 2d 175 (1967); State, ex rel. Slaughter v. Indus. Comm., 132 Ohio St. 537 (1937). Substantive law is that which creates duties, rights and obligations, while procedural or remedial law prescribes the methods of enforcement of rights or obtaining redress. Kilbreath v. Rudy, supra, at p. 72.

Similarly laws have been viewed as impairing the obligations of contracts where they are construed to affect the contractual rights of the parties to the contract. Wheatley Trustee v. The A. I. Root Co., 147 Ohio St. 127 (1946). It follows that collective bargaining agreements between contractors and laborers come within the purview of Article II, Section 28, supra, which protects rights arising under such contracts.

In the present case it has been suggested that the Prevailing Wage Law in R.C. Chapter 4115 is in fact a minimum wage law covered by Article II, Section 34, Constitution of Ohio. That section authorizes the enactment of laws "establishing a minimum wage" and provides that "no other provision of the constitution shall impair or limit this power." In Vincent v. Elyria Board of Education, 7 Ohio App. 2d 58 (1966), the court held that the above language excepted laws passed pursuant thereto from the restrictions of Article II, Section 28, supra.

However, in Craig v. Youngstown, 162 Ohio St. 215 (1954), which concerned the effect of the Prevailing Wage Law on a municipal corporation's authority under the home rule provisions of the constitution, the court at pp. 220, 221, addressed itself to the contention that the Prevailing Wage Law was enacted pursuant to Article II, Section 34, supra. The court stated at p. 221:

> "[I]t is the view of this court that the Prevailing Wage Law does not establish 'a minimum wage' in the sense that those words are used in Section 34, Article II of the Constitution. In that connection it is to be noted that the General Assembly has enacted other statutes comprised in Sections 154-45d to 154-45t, General Code, which sections appear under the heading, 'Minimum Fair Wage Standards,' and which are commonly known as the Minimum Wage Act. The corresponding sections in the Revised Code are 4111.01 et seq. There is no issue in the instant case with respect to the Minimum Wage Act and no construction of it is required or undertaken herein. It is only pertinent to observe that the subject of minimum wage was covered by the General Assembly by the enactment of statutes entirely separate from those comprising the Prevailing Wage Law."

Similarly, in Hilton v. Board of Education, 51 Ohio App. 336 (1935), the court, in finding the Prevailing Wage Law to be constitutional noted that the legislature's power to enact such laws "exists independent of the provisions of Article II, Section 34 of the Ohio constitution, authorizing the passage of laws . . . establishing the minimum wage . . ., but is in conformity with the spirit of this constitutional provision."

The prevailing wage provisions of R.C. Chapter 4115 have on occasions been characterized as a minimum wage law. See Dennis v. Young, 17 Ohio Misc. 294 (1967); 1951 Op. Att'y Gen. No. 906, p. 715; 1939 Op. Att'y Gen. No. 1494, p. 2208. However, in none of these opinions was the characterization in reference to Article II, Section 34, supra, and they may in fact be reconciled with the Craig and Hilton cases as merely reflecting the fact that the Prevailing Wage Law, while independent of the provisions of Article II, Section 34 supra, "is in conformity with the spirit of this constitutional provision." In any event the rule announced by the Supreme Court in Craig v. Youngstown, supra, must by its nature control on the question at hand.

In view of the foregoing discussion I must conclude that Am. H.B. No. 1171, supra, does not apply to contracts in existence at the time the act became effective, so as to affect substantive rights arising under such contracts.

In specific answer to your questions it is my opinion, and you are so advised that:

1. Contractors who are parties to contracts entered prior to September 26, 1974, are not required to provide to the prevailing wage coordinator information described in R.C. 4115.071 (Am. H.B. No. 1170, effective 9/26/74).

2. Am. H.B. No. 1171, effective 9/26/74, which amended R.C. 4115.04 and R.C. 4115.05 to require the payment of a prevailing wage based on the most recent collective bargaining agreements, does not apply to contracts entered prior to the effective date of that act.