

OPINION NO. 76-041

Syllabus:

A contract for the sale and removal of turbo-generators and related equipment from a municipal building is a contract for "construction" under R.C. 4115.03 and is subject to the prevailing wage provisions of R.C. 4115.04 et seq.

**To: Helen W. Evans, Director, Ohio Department of Industrial Relations,
Columbus, Ohio**

By: William J. Brown, Attorney General, May 21, 1976

Your request for my opinion reads as follows:

"The City of Cleveland recently advertised for bids for the sale and removal of seven turbo-generators with associated piping and electrical equipment. The contractor who submitted the highest bid, \$105,493, was vested with all right and title to the fixtures.

"The conditions of sale also required that the vendee remove the generators from city property. Do these circumstances warrant application of Ohio's Prevailing Wage Laws, Chapter 4115 of the Ohio Revised Code, to the labor involved in the removal of the generators?"

R.C. 4115.04 et seq. makes the prevailing wage provisions of R.C. Chapter 4115 applicable to contracts by public authorities for the construction of public improvements. The issue raised then is whether the contract described in your request is a contract for the construction of a public improvement.

R.C. 4115.03 reads in part as follows:

"As used in sections 4115.03 to 4115.10, inclusive, 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 fairly estimated to cost more than two 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 the state or any political subdivision thereof."

The contract in question is for both the sale and the removal of generators and related equipment from a municipal building. In 1971 Op. Atty. General No. 71-054 I had occasion to consider whether the trimming and removal of trees along a street was "construction" as that term is defined in R.C. 4115.03. While tree trimming might be characterized as maintenance and not construction, I noted that the removal of trees was a major change or alteration and, therefore, constituted construction under R.C. 4115.03. I stated further that:

"Since the contract with which you are concerned involves both trimming and removal and since removal is an alteration or repair within the statutory definition of "construction," I must conclude that the minimum wage provisions of Sections 4115.03 et seq. supra, apply. Otherwise, it could become possible to avoid the requirements of those provisions by including maintenance work with "construction" work in the same contract. In other words, it is my opinion that where two activities are required in one contract and one such activity is "construction" as defined in Section 4115.03, supra, the contract work is subject to the minimum wage provisions. Thus, it is not necessary to determine whether or not tree trimming is "construction."

(Emphasis added)

The contract in question is one for both the removal and sale of the turbo-generators. The removal of the turbo-generators and related equipment is one of the stated purposes of the contract and is a major change and alteration of the physical plant. In addition, you have indicated that, pursuant to the contract, the work is to be performed by other than full time employees who have completed their probationary periods in the classified service of the public authority. Therefore, provided the estimated cost of removal is more than \$2000, it is "construction" as that term is defined by R.C. 4115.03, and the work is subject to the prevailing wage provisions set out in R.C. 4115.04 et seq.

In specific answer to your question it is my opinion and you are advised that a contract for the sale and removal of turbo-generators and related equipment from a municipal building is a contract for "construction" under R.C. 4115.03 and is subject to the prevailing wage provisions of R.C. 4115.04 et seq.