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FULL TIME REGULAR COUNTY ENGINEERING DEPARTMENT EMPLOYEES ARE NOT INCLUDED WITHIN THE TERMS OF §§ 4115.03 TO .06 RC—PROVIDED: EMPLOYEES ARE NOT ENGAGED IN “CONSTRUCTING A PUBLIC IMPROVEMENT” AS DEFINED IN THOSE SECTIONS.

BRIDGES—NO MONETARY LIMITATION ON AMOUNT TO BE SPENT WHEN BRIDGE CONSTRUCTED BY FORCE ACCOUNT—§ 5513.19 RC.

SYLLABUS:

1. The provisions of Sections 4115.03 to 4115.06, inclusive, Revised Code, are not applicable to full time regular salaried employees of a county engineering department so long as such employees are not engaged in constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, Revised Code.

2. There is no monetary limitation, similar to that set out in Section 5555.71, Revised Code, based upon the cost of a bridge project conducted by force account pursuant to Section 5513.19, Revised Code.

Columbus, Ohio, October 11, 1957

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir :

I have your request for my opinion reading as follows:

“Two questions have arisen concerning the operation of the Franklin County Engineering Department upon which the Frank-

lin County Engineer has requested us to seek your opinion. The County Engineer has pointed out to us that the answers to these questions might seriously affect the operation of the County Engineering Department in each of the eighty-eight counties in this state. We are, therefore, respectfully requesting your opinion on the following questions:

1. The Franklin County Engineering Department employs, on a full time basis at a monthly salary or hourly rate, many employees who are used for maintenance work and are also used on jobs which could come within the category of construction, alteration, or repair. Because these employees are on a full time salaried basis, they are shifted from one type of work to another as the need therefor arises. Are the provisions of Sections 4115.03 to 4115.06, inclusive, of the Revised Code, applicable to the full time salaried employees of the Franklin County Engineering Department?

2. Section 5543.19, Revised Code, authorizes the County Engineer to do construction, maintenance, and repair work on roads, bridges and culverts by force account. Section 5555.71, Revised Code, provides that certain road work may be undertaken by force account, but when the estimated cost of the work exceeds three thousand dollars per mile the Board must invite and receive competitive bids, and must consider and reject such bids before ordering the work done by force account. Is there any similar monetary limitation, or any other limitation, upon the County Engineer's authority to perform bridge work by force account?"

In answer to your first question, I invite your attention initially to Chapter 4115., Revised Code, Section 4115.04, Revised Code, in particular:

"Every public authority authorized to contract for or *construct with its own forces a public improvement*, before advertising for bids or undertaking such construction with its own forces, shall have the department of industrial relations determine the prevailing rates of wages of mechanics and laborers for the class of work called for by the public improvement, in the locality where the work is to be performed. Such schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract. A minimum rate of wages for common laborers, on work coming under the jurisdiction of the department of highways, shall be fixed in each county of the state by said department of highways, in accordance with Section 4115.05 of the Revised Code. Sections 4115.03 to 4115.10 inclusive, of the Revised Code, do not apply to public improvements in any case where the federal government or any of its agencies furnishes by loan or grant all or any part of the funds used in constructing such

improvements, provided the federal government or any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers employed in the construction of such improvements.” (Emphasis added.)

Section 4115.06, Revised Code, provides:

“Where a *public authority constructs a public improvement with its own forces such public authority shall pay a rate of wages which shall not be less than the rate of wages fixed as provided in section 4115.04 of the Revised Code.* Any mechanic or laborer paid less than such rate by any public authority has a right of action against such public authority for the difference between the fixed rate of wages and the amount paid to him, and in addition thereto a forfeiture equal in amount to such difference.” (Emphasis added.)

I invite your attention here to the fact that the term “construct a public improvement,” as set out in each of the above quoted sections, is not to be included within the scope of the definition of “construction” found in Section 4115.03, Revised Code. In this regard I invite your attention to 37 Ohio Jurisprudence, 538, reading in part:

“Legislative definitions should be construed strictly where they are employed to make particular words mean something different or more than they naturally and ordinarily signify.”

The definitions contained in Section 4115.03, Revised Code, here pertinent are:

“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, or repair of any public improvement fairly estimated to cost more than three hundred dollars.

(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. * * *” (Emphasis added.)

In the situation you present the regular employees of the county engineering department are engaged in projects being carried on by force account. I do not consider such employees to have been hired "to *construct* a public improvement." Furthermore, I do not consider the county in such a situation to be a "public authority" constructing a public improvement "by the *direct* employment of labor." These sections deal with situations where: (1) the county contracts with a person or corporation for the "construction" of a "public improvement"; and (2) those instances in which the county directly employs labor for the "construction" of a "public improvement." Regular county employees can hardly be termed laborers or mechanics employed *directly* by the county for the "construction" of a "public improvement" conducted by force account. From the defining language of Section 4115.03 (A), Revised Code, I conclude that the regular employees of the county engineering department are not employees of a "public authority" "authorized to construct" a public improvement "by the *direct* employment of labor" so that the wages paid full time regular employees are subject to the provisions of Sections 4115.03 to 4115.06, Revised Code.

However, when the county "constructs" a public improvement" by using its own forces as provided in Section 4115.06, *supra*, the county must pay the wages prescribed by the Department of Industrial Relations, Sections 4115.03, *et seq.*, Revised Code.

Accordingly, in this situation and under a proper interpretation of the statutes, I am impelled to answer your first question in the negative.

In answer to your second question, I invite your attention to Opinion No. 2411, Opinions of the Attorney General for 1921, p. 822, the first paragraph of the syllabus reading:

"In the construction or re-construction, as well as the repair, of a bridge by a county, the method commonly known as force account may be followed, whatever may be the estimated cost of the project, that is to say, that under sections 7200 and 7214, G.C., the county commissioners may purchase the necessary machinery, tools, equipment and materials, and under section 7198 G.C. authorize the county surveyor to employ the necessary teams and labor; or the commissioners may, by virtue of the last named section, authorize the county surveyor to purchase the materials, lease the implements and tools and employ the labor necessary for the project." (Emphasis added.)

In Opinion No. 3140, Opinions of the Attorney General for 1931, p. 530, the then Attorney General discussed the authority of the board of county commissioners to construct a bridge by force account under Section 7198, General Code, now Section 5543.19, Revised Code. In the course of the opinion Section 6948-1, General Code, now Section 5555.71, Revised Code, was cited and the monetary limitation of that section, "three thousand dollars per mile," was restricted in its application so as to include only road projects.

The most recent expression upon this proposition is to be found in Opinion No. 1498, Opinions of the Attorney General for 1950, p. 103, at page 105. The then Attorney General quoted the 1921 opinion, *supra*, and concurred in its reasoning and conclusion. With these opinions I concur.

Therefore, in specific answer to your second question, I conclude that there is no monetary limitation upon the cost of a bridge project conducted by force account pursuant to Section 5513.19, Revised Code.

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

1. The provisions of Sections 4115.03 to 4115.06, inclusive, Revised Code, are not applicable to full time regular salaried employees of a county engineering department so long as such employees are not engaged in constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, Revised Code.

2. There is no monetary limitation, similar to that set out in Section 5555.71, Revised Code, based upon the cost of a bridge project conducted by force account pursuant to Section 5513.19, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General