## OPINION NO. 77-076

**Syllabus:**

1) An individual practicing a particular trade or occupation qualifies as a laborer, workman or mechanic, as those terms are used in R.C. 4115.04 and R.C. 4115.05, if members of the same trade or occupation are paid wages pursuant to the terms of a collective bargaining agreement or an understanding between employers and bona fide labor organizations.

2) Any activity, other than maintenance, which results in a physical change to a public improvement, constitutes construction within the meaning of R.C. 4113.04 provided that the cost of such activity is fairly estimated to exceed $4,000, and the work is to be performed by other than full-time, non-probationary employees of a public authority.

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**To: Helen W. Evans, Director, Dept. of Industrial Relations, Columbus, Ohio**
**By: William J. Brown, Attorney General, November 21, 1977**

I have before me your request for my opinion which reads as follows:

> Does the installation of security systems, computer installations, communications equipment, etc., in an existing structure or building under construction require the payment of the prevailing rate of wages to those installing and calibrating or otherwise adjusting such equipment? In many instances, such technicians are in fact skilled specialists holding Associate of Arts degrees in their fields of endeavor. Referring to 1951 Attorney General Opinions at page 585, should these men be classified as mechanics or laborers who work with their hands and thus fall within the purview of the statute, or is their work based on professional training rendering the law inapplicable to them?
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> Secondly, the equipment installed by these individuals is invariably connected to the electrical system of the edifice. Is the installation of computers, security systems and similar equipment included within the definition of construction of a new structure, when any electrical work which is required is merely adjunct to the existing electrical system and is not fully integrated into the building?

R.C. 4115.04 and R.C. 4115.05 address the issue of a minimum wage for individuals working upon public improvements.

R.C. 4115.04 provides, in part, as follows:

> 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 for mechanics and laborers in accordance with section 4115.05 of the Revised Code for the class of work called for by the public improvement, in the locality where the work is to be performed.

R.C. 4115.05 which defines the procedure by which the prevailing wage is to be determined, reads in pertinent part as follows:

> The prevailing rate of wages to be paid for a legal day's work, as prescribed in section 4115.04 of the Revised Code, to laborers, workmen, or mechanics upon public works shall not be less at any time during the life of a contract for the public work than the prevailing rate of wages then payable in the same trade or occupation in the locality where such public work is being performed, under collective bargaining agreements or understandings, between employers and bona fide organizations of labor in force at the date the contract for the public work, relating to the trade or occupation, was made, and collective bargaining agreements or understandings successor thereto.
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> . . . .
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> In the event there is no such collective bargaining agreement or understanding in the immediate locality, then the prevailing rates of wages in the nearest locality in which such collective bargaining agreements or understandings are in effect shall be the prevailing rate of wages, in such locality, for the various occupations covered by sections 4115.04 to 4115.10 of the Revised Code.

It should be noted that R.C. 4115.04 refers to "mechanics and laborers" while R.C. 4115.05 refers to "laborers, workmen, or mechanics." I agree with my predecessor's conclusion in 1953 Op. Att'y Gen. No. 3193, p. 570, that the General Assembly is speaking in both sections to the same class of workers.

The question, therefore, is whether the growing class of technicians who install complex electronic equipment in public construction falls under the heading "laborers, workmen, or mechanics," as contemplated by the General Assembly in the enactment of R.C. Chapter 4115.

In 1951 Op. Att'y Gen. No. 809, p. 580 a predecessor concluded that technical and professional engineers do not qualify as "laborers, workmen and mechanics" as those terms are used in R.C. 4115.05. After reviewing numerous definitions of the terms in question, he concluded as follows:

> It is my opinion that the General Assembly in enacting the laws in question had in mind only men who work with their hands, and who are included in the commonly accepted definitions of "mechanic", "workman" and "laborer", and did not intend to include persons whose work is based on professional training.

Although the analysis adopted by my predecessor in Op. No. 809, supra, may have been appropriate at the time, it is of little assistance in classifying an ever expanding group of highly skilled technicians. Moreover, the conclusion stated therein was adopted without reference to the legislative intent of the statute and, if followed, will require the resolution of all future questions on an ad hoc basis.

The meaning of generic terms such as "laborers, workmen, or mechanics" is often contextual. In attempting to define such terms, one must consider the object that the statute was designed to effect.

The apparent purpose of R.C. 4115.04 and R.C. 4115.05 is to ensure that those individuals participating in public construction are paid the same wages as individuals of the same trade or occupation who are paid pursuant to the terms of a collective bargaining agreement or a similar understanding. The wages determined by such an agreement provide the only basis upon which the Department of Industrial Relations is able to determine the prevailing wage. If individuals practicing the same trade or occupation as the individuals in question are paid pursuant to the terms of a collective bargaining agreement, then those individuals, however skilled, come within the spirit of R.C. 4115.04 and R.C. 4115.05. Conversely, if the members of the trade or occupation in question have not entered into such an agreement, the procedure set forth in R.C. 4115.05 is rendered wholly inoperable and those individuals, however unskilled, cannot qualify as laborers, workmen and mechanics.

In answer to your first question, therefore, I must conclude that an individual practicing a particular trade or occupation qualifies as a laborer, workman or mechanic as those terms are used in R.C. 4115.04 and R.C. 4115.05, if members of the same trade or occupation are paid wages pursuant to the terms of a collective bargaining agreement or understanding between employers and bona fide labor organizations.

Your second question inquires as to whether the installation of computers, security systems and similar equipment qualifies as construction under the terms of R.C. Chapter 4115.

R.C. 4115.03, which defines various terms used in R.C. Chapter 4115., provides in part as follows:

> As used in sections 4115.03 to 4115.10, inclusive of the Revised Code:
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> . . . .
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> (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 cost 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.
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> (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.

Under R.C. 4115.03 (B) three tests must be met in order for the complex electronic equipment that is installed and connected to the electrical system of an edifice to qualify as "construction".

First, the work being done must result in an improvement, enlargement, alteration, repair, painting or decorating of the public project. Second, the work

must fairly be estimated to cost more than four thousand dollars. Finally, the work must be performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority. The second and third tests call for factual determinations that can be easily made.The first test which depends upon the nature of the activity, entails a more difficult factual analysis.

In 1976 Op. Att'y Gen. No. 76-041, I had occasion to consider whether the removal of turbo-generators and related equipment from a municipal building constituted construction as defined in R.C. 4115.03. I concluded that the removal of turbo-generators would come within the statutory definition, since it entailed a major change and alteration of the physical plant, if the estimated cost exceeded the statutory limit and if the work was to be performed by other than full-time, non-probationary employees.

Op. No. 76-041, supra, is the most recent in a series of opinions to conclude that various types of activity constitute "construction". See, e.g., 1971 Op. Att'y Gen. No. 71-054 (the removal of trees from city streets); 1939 Op. Att'y Gen. No. 1494, p. 2208 (highway repair work); 1938 Op. Att'y Gen. No. 2161, p. 648 (erection of street signs). Indeed, the only type of activity that has been consistently excluded from the scope of R.C. 4115.03 is that which is clearly aimed towards maintenance. See, e.g., 1939 Op. Att'y Gen. No. 1494, p. 2208 (highway maintenance); 1938 Op. Att'y Gen. No. 2161, p. 648 (street cleaning, snow removal).

It is not possible to determine on the facts provided in your letter whether the proposed activity is correctly classified as an improvement, an enlargement, or an alteration. Such a determination is, however, not required. Inasmuch as the installation of equipment results in a physical change in the public improvement, as opposed to mere maintenance, it is reasonably clear that the work qualifies as construction. Moreover, the fact that the required electrical work is merely adjunct to the existing electrical system and is not fully integrated into the building is not significant. The total overall project cost, not the nature of the activity, is the proper test under the statute for excluding projects of insignificant scope.

Thus, it is my opinion and you are so advised that:

1) An individual practicing a particular trade or occupation qualifies as a laborer, workman or mechanic, as those terms are used in R.C. 4115.04 and R.C. 4115.05, if members of the same trade or occupation are paid wages pursuant to the terms of a collective bargaining agreement or an understanding between employers and bona fide labor organizations.

2) Any activity, other than maintenance, which results in a physical change to a public improvement, constitutes construction within the meaning of R.C. 4113.04 provided that the cost of such activity is fairly estimated to exceed $4,000, and the work is to be performed by other than full-time, non-probationary employees of a public authority.