

OPINION NO. 80-051

Syllabus:

The provisions of R.C. 153.12 are applicable to the award and payment of any contract for a public improvement project entered into by any county, township, municipal corporation or other subdivision of the state, excepting boards of education, whether or not state funds are provided for such project.

To: John S. Cheelwood, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, September 5, 1980

I have before me your request for an opinion in which you inquire whether the provisions of R.C. 153.12 are applicable to all contracts for public improvement projects entered into by counties, townships and municipal corporations or only to those contracts for public improvement projects for which state funds are provided. It is my understanding that your concern is whether the application of R.C. 153.12 is limited by the express provisions of R.C. 153.01.

R.C. 153.12 specifies the procedure for the "award of any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement made by the state, or any county, township, municipal corporation, or other political subdivision" (emphasis added). R.C. 153.12 was recently amended by Am. H.B. 497 and Am. S.B. 290.

Am. H.B. 497, which became effective June 25, 1980, requires the political subdivisions enumerated in R.C. 153.12 to "include, in the plans and specifications for the project for which bids are solicited, the estimate of cost." Am. S.B. 290, which also became effective on June 25, 1980, modified the version of R.C. 153.12 contained in Am. H.B. 497 to specifically exempt school boards from the provisions of R.C. 153.12. R.C. 153.12, as amended by Am. H.B. 497 and Am. S.B. 290, now provides, in pertinent part, as follows:

With respect to award of any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement made by the state, or any county, township, municipal corporation, or other political subdivision, or any public board, commission, authority, instrumentality or special purpose district of or in the state or a political subdivision and that is authorized by state law, the award, and execution of the contract, shall be made within sixty days after the date on which the bids are opened. The failure to award and execute the contract within sixty days invalidates the entire bid proceedings and all bids submitted, unless the time for awarding and executing the contract is extended by mutual consent of the owner or its representatives and the bidder whose bid the owner accepts and with respect to whom the owner subsequently awards and executes a contract. The public owners referred to in this section shall include, in the plans and specifications for the project for which bids are solicited, the estimate of cost. . . .

. . . .

This section does not apply to boards of education. (Emphasis added.)

R.C. 153.01, which requires that plans and estimates be approved by the Attorney General and filed with the Auditor of State, is applicable to the construction or improvement of "any building or structure for the use of the state or any institution supported in whole or in part by the state or in or upon the public works of the state that is administered by the director of administrative services." The provisions of R.C. 153.01 have been held to apply only to construction or

improvements undertaken or funded by the state. See Lurie v. Board of Education, 12 Ohio Op. 358 (C.P. Cuyahoga County 1938) (construing G.C. 2314, which is the predecessor of R.C. 153.01); Plessner v. Pray, 6 Ohio N.P. 444 (C.P. Lucas County 1896) (construing R.S. 782, which is the predecessor of R.C. 153.01).

You suggest in your inquiry that the provisions of R.C. 153.01 restrict the application of all other sections of R.C. Chapter 153 to those public improvement projects which are undertaken by the state, undertaken upon state property, or funded by the state. On the basis of such a theory, you further suggest that the provisions of R.C. 153.12 should be construed to apply only to those public improvement projects, undertaken by a county, a township, or a municipal corporation, which are funded by the state.

There do not appear to be any judicial decisions or opinions of the Attorney General on the precise issue you present. The legislative history of R.C. 153.12, however, is helpful in determining the intended scope and application of that statute.

Prior to 1976, R.C. 153.12 governed the award and payment of only those contracts entered into pursuant to R.C. 153.01 and R.C. 153.06 for the construction or improvement of any building or structure owned by, or for the use of, the state, or upon public works of the state. 1959 Ohio Laws 926 (Am. Sub. H.B. No. 627, eff. Oct. 12, 1959); R.C. 153.01, 1973 Ohio Laws 533, 679 (Am. S.B. No. 174, eff. Dec 4, 1973). R.C. 153.12 did not, at that time make any reference to public improvement contracts entered into by a county, a township, a municipal corporation, or any other subdivision of the state. In 1976, however, R.C. 153.12 was specifically amended "to provide for a uniform system of award, commencement, and payment on public construction contracts." 1976 Ohio Laws Pt. I 749 (Am. Sub. S.B. No. 330, eff. Aug. 27, 1976). The 1976 amendments to R.C. 153.12 extended the application of that statute to the award of any public improvement contract by a county, a township, a municipal corporation, or other political subdivision of the state. R.C. 153.12 remained unchanged subsequent to the 1976 amendments until its recent amendment by Am. H.B. 497 and Am. S.B. 290.

It is a well-settled principle of statutory construction that the legislature, in enacting a statute, is presumed to use words that intelligently and advisedly express the intent of the legislature. Watson v. Doolittle, 10 Ohio App. 2d 143, 226 N.E. 2d 771 (Williams County 1967). There is no indication in the language of R.C. 153.12 that the intent was for R.C. 153.12 to apply only to those county, township and municipal public improvement contracts for which state funds are to be provided, nor is there any indication in the language of R.C. 153.01 that the intent was for R.C. 153.01 to so limit the application of R.C. 153.12. To the contrary, R.C. 153.12, by its express terms, applies to any public improvement contract entered into by any county, township, municipal corporation, or other subdivision of the state. Consequently, it must be concluded that the legislature, in expressly amending R.C. 153.12 to include any public improvement contract made by "any county, township, municipal corporation, or other political subdivision," intended for R.C. 153.12 to be a law of general application, governing all contracts entered into by the state or a subdivision of the state for the construction or repair of any public improvement, including contracts for the construction or improvement of buildings, roads, highways, bridges and water and sewer facilities.¹ The fact that

¹The term "public improvement" has been defined to include buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works and all other structures constructed by the state or a political subdivision of the state. R.C. 4115.03(C) (governing wages paid and hours worked on "public improvement" projects). See also Van Wert National Bank v. Roos, 134 Ohio St. 359, 17 N.E. 2d 651 (1938) (a county ditch is a public improvement); Willyard v. Hamilton, 7 Ohio Pt. II 111 (1836) (highways, turnpikes and canals are public improvements); Young v. Buckingham, 5 Ohio 485 (1832) (highways, turnpikes and bridges are public improvements). Thus, it may be concluded that the term "public improvement," as used in R.C. 153.12, was intended to encompass all of the aforementioned structures.

various statutes which had provided for the award and payment of building, road, highway and bridge construction contracts entered into by counties, townships and municipal corporations were repealed by Am. Sub. S.B. 330² when R.C. 153.12 was amended in 1976 further evidences that such was the legislative intent.

In view of the plain language of R.C. 153.12, and in light of the fact that R.C. 153.12 was expressly amended to include public improvement contracts entered into by counties, townships, municipal corporations and other subdivisions, it is my opinion, and you are so advised, that the provisions of R.C. 153.12 are applicable to the award and payment of any contract for a public improvement project entered into by any county, township, municipal corporation or other subdivision, excepting boards of education, whether or not state funds are provided for such project.

²The following Revised Code sections were repealed by the enactment of Am. Sub. S.B. 330: R.C. 153.46 (governing award of contracts for county building or bridge construction, repair or improvement); R.C. 153.47 and R.C. 153.48 (governing estimated payments on county bridge and building contracts); R.C. 735.071 (governing payments to contractors on contracts entered into by municipal corporations); R.C. 735.072 (requiring municipal corporations to withhold a percentage of the amount owing under a contract); R.C. 753.073 (governing payments by a municipal corporation for materials used on a public improvement project); R.C. 5555.65 (governing progress payments on highway improvement contracts); R.C. 5575.08 (governing estimated payments on county and township road construction contracts).