

**OPINION NO. 78-035****Syllabus:**

The terms of R.C. 4115.03(B) exempt from the operation of the prevailing wage laws only the full-time, non-probationary employees in the classified service of a public authority included within the scope of R.C. 124.11.

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**To: Helen W. Evans, Director, Dept. of Industrial Relations**  
**By: William J. Brown, Attorney General, June 13, 1978**

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

I must request your opinion for the purpose of clarifying certain aspects of Chapter 4115 of the Ohio Revised Code. Section 4115.03(B) indicates that work done by full-time non-probationary employees in the classified service of a public authority is excluded from the operation of Ohio's prevailing wage laws.

The problem has arisen in that many public authorities afford their employees the protections of a civil service system but they have not established such a system per se. In many jurisdictions these protections such as a right to appeal personnel actions have been extended to unclassified personnel as well. In applying the prevailing wage statutes to these public authorities, the contention has been raised that these employees fall within the exemption stated in 4115.03(B) R.C. on a de facto basis if not de-jure.

I must request explication as to when the "classified service" exemption of Section 4115.03(B) of the Ohio Revised Code is applicable to a public works project constructed by a public authority using its own forces.

The provisions of R.C. Chapter 4115 set a number of requirements applicable to wages and hours on public works. For example, R.C. 4115.04 requires that every public authority authorized to contract for or construct with its own forces a public improvement have the Department of Industrial Relations determine the prevailing rate of wages for the class of work called for by an improvement prior to advertising for bids or undertaking construction with its own forces.

As you have noted, however, the definitions set forth in R.C. 4115.03 govern the prevailing wage provisions of R.C. 4115.03 to 4115.10 inclusive. R.C. 4115.03(B) defines "construction" for the purposes of R.C. 4115.03 to 4115.10 as follows:

"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. (Emphasis Added).

Consequently, work done by full-time non-probationary, classified employees of a public authority is, by definition, not construction and such work thus is not subject to the prevailing wage requirements of R.C. 4115.03 to 4115.10.

Your question, therefore, centers upon a determination of which employees shall be considered as in the classified service of a public authority so as to exempt work performed by such employees from the prevailing wage requirements of R.C. 4115.03 to 4115.10. R.C. 4115.03(A) defines "public authority" in the following terms:

"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.

While there is no definition of the term "classified service" provided in R.C. Chapter 4115, a reference to the civil service laws is clear. R.C. 124.11 divides the civil service of the state, the several counties, cities, civil service townships, city health districts, general health districts and city school districts into the classified and unclassified service as therein provided. When a public employee enjoys classified status for the purposes of Ohio's civil service laws, he does so as provided by R.C. 124.11. Under the terms of R.C. 124.11, an employee in the classified service must be in the service of the State or one of the subdivisions enumerated therein. See, e.g., 1976 Op. Atty Gen. No. 76-018; 1965 Op. Atty Gen. No. 65-121; 1962 Op. Atty Gen. No. 3073.

As you have observed, there are political subdivisions of the state which are "public authorities" as defined by R.C. 4115.03(A) but are not included within the terms of R.C. 124.11. Some of these subdivisions elect to provide protections to their employees similar to those extended to employees in the classified service as defined by R.C. 124.11. While the governing officer or body of such a subdivision is, in many instances, empowered to grant such protections to the employees of the subdivision, the extension of protection does not confer upon the employees involved "classified" status under the terms of R.C. 124.11. I am of the opinion that the governing officer or body of a political subdivision not included within the scope of R.C. 124.11 lacks the authority to exempt its work force from the

application of the prevailing wage laws, since the parameters of the classified civil service are set by the provisions of R.C. 124.11.

In specific answer to your question, it is my opinion, and you are so advised, that the terms of R.C. 4115.03(B) exempt from the operation of the prevailing wage laws only the full-time, non-probationary employees in the classified service of a public authority included within the scope of R.C. 124.11.