OPINION NO. 2000-006

Syllabus:

A nonprofit corporation is not required to comply with R.C. 4115.03-.16, the state prevailing wage law, when it uses private moneys to construct on park district property a building addition that, upon its completion, is to be donated to the park district, provided that the nonprofit corporation and the park district have not entered into any contracts concerning the construction of the building addition. (1949 Op. Att'y Gen. No. 716, p. 365, syllabus, paragraph one, approved and followed.)

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio
By: Betty D. Montgomery, Attorney General, February 14, 2000

You have requested an opinion concerning the application of the state prevailing wage law to a construction project undertaken by a nonprofit corporation on property owned by the Richland County Park District.[1] You state that a nonprofit corporation wishes to construct a building addition to the Richland County Park District's Gorman Nature Center. The building addition will be built on property owned by the park district, and the costs of construction will be funded entirely by the nonprofit corporation. The funds of the nonprofit corporation are derived solely from private donations and profits from a bookstore operated by the nonprofit corporation, and thus no public monies will be expended to construct the building addition.[2] Upon completion of the construction, the nonprofit corporation will donate the building addition to the park district for use as office space and a place for conducting public programs. The park district intends to permit the nonprofit corporation to use the building addition for similar purposes. In light of these particular facts, you ask in your first question whether the nonprofit corporation must comply with the state prevailing wage law when it uses private moneys to construct a building addition that is to be donated to the park district after it is completed.

You also explain in your letter that the nonprofit corporation and the park district are contemplating an alternative plan for constructing the building addition:

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[1]You have informed us that the Richland County Park District was created in accordance with the provisions of R.C. Chapter 1545. *See generally* R.C. 1545.01 (authorizing the creation of park districts that include all or a part of the territory within a county). Under R.C. Chapter 1545, a park district may be created by order of a probate court, subsequent to notice and hearing as required by R.C. 1545.03 and R.C. 1545.04, or through conversion of a township park district into a park district operated and maintained under R.C. Chapter 1545, R.C. 1545.041.

[2]You assert that the nonprofit corporation does not receive any public moneys from any source.

> Alternatively, the Non-profit corporation has proposed to lease land from the Park District. The lease would grant the Non-profit corporation the right to build the building addition on Park District land. The Non-profit corporation would not pay any rent to the Park District. As stated above, the Non-profit corporation would construct the building addition entirely with private funds. It would own the building addition and maintain and insure it. It would use the building addition for its bookstore, office space, and its public programs. It would also allow the Park District to use the building addition at no cost for office space and its public programs. Upon termination of the lease, ownership of the building addition would be forfeited to the Park District.

A member of your staff has stated that the park district and the nonprofit corporation will use the original plan if it is determined that the nonprofit corporation is not required to comply with the state prevailing wage law when it uses private moneys to construct a building addition that is to be donated to the park district after it is completed. However, if it is determined that the nonprofit corporation must comply with the state prevailing wage law under that plan, the park district and the nonprofit corporation may decide to use this alternative plan instead of the original plan. Before making this decision, the park district and the nonprofit corporation wish to know whether the alternative plan may also implicate the provisions of the state prevailing wage law. You have asked us to address this possibility in your second question in the event of an affirmative answer to your first question.

As a preliminary matter, prior opinions of the Attorneys General have stated that neither R.C. 309.09, which requires a prosecuting attorney to be the legal adviser to county boards, township boards and commissions, and county and township officers, nor any other statute obligates or authorizes a prosecuting attorney to provide legal services or representation to a park district created under R.C. Chapter 1545 or the officers thereof. *See* 1994 Op. Att'y Gen. No. 94-035 at 2-175 through 2-177; 1991 Op. Att'y Gen. No. 91-009 at 2-44; 1964 Op. Att'y Gen. No. 1297, p. 2-322; 1927 Op. Att'y Gen. No. 279, vol. I, p. 489; 1919 Op. Att'y Gen. No. 125, vol. I, p. 217. Consequently, by extension, we have refrained from examining the duties and responsibilities of a park district created under R.C. Chapter 1545, or its officers, unless the examination is necessarily related to the statutory obligations of the prosecuting attorney or a governmental entity or officer represented by the prosecuting attorney. *See* 1991 Op. Att'y Gen. No. 91-009 at 2-44. *See generally* 1988 Op. Att'y Gen. No. 88-008 at 2-25 (Attorney General may advise statutory clients only to the extent of their duties).

In 1996, however, the General Assembly amended R.C. 309.09 to permit a prosecuting attorney to provide legal services to a park district created pursuant to R.C. Chapter 1545. *See* 1995-1996 Ohio Laws, Part II, 3213 (Sub. H.B. 268, eff. May 8, 1996). As amended, R.C. 309.09(D) provides, in part, that, "[t]he prosecuting attorney and the board of county commissioners jointly may contract with a board of park commissioners under [R.C. 1545.07] for the prosecuting attorney to provide legal services to the park district the board of park commissioners operates." *See also* R.C. 1545.07 (a board of park commissioners of a park district may contract, in accordance with R.C. 309.09(D), for the legal services of the prosecuting attorney of the county in which the park district is located). Accordingly, if a board of park commissioners contracts, pursuant to R.C. 309.09(D) and R.C. 1545.07, for the legal services of the prosecuting attorney of the county in which the park district is located, the prosecuting attorney may provide legal services to the board.

You have informed us that your office and the board of county commissioners of Richland County have entered into an agreement with the Richland County Park District pursuant to R.C. 309.09(D) and R.C. 1545.07 whereby your office will provide the Richland County Park District with legal services. Pursuant to this agreement, your office is required to advise the park district and its officers with respect to their official duties. Your duties as prosecuting attorney thus include advising the park district and its officers.

In addition, your office possesses statutory authority to initiate criminal proceedings. Pursuant to R.C. 309.08(A), a prosecuting attorney "may inquire into the commission of crimes within the county" and "shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party." A prosecuting attorney thus is required to enforce R.C. 4115.99,[3] which is a penal statute that classifies as misdemeanors violations of certain provisions of the state prevailing wage law. *See State v. Buckeye Elec. Co.*, 12 Ohio St. 3d 252, 466 N.E.2d 894 (1984). You are, accordingly, invested with the authority to prosecute criminal violations of the state prevailing wage law. *Id.*

In light of the foregoing, it is clear that your office is authorized to advise the park district and its officers and to prosecute criminal violations of the state prevailing wage law. It is, therefore, appropriate for us to address your specific questions concerning the application of the state prevailing wage law to a construction project undertaken by a nonprofit corporation on property owned by a park district.

Let us now turn to your specific questions. Ohio's prevailing wage law is set forth in R.C. 4115.03-.16. "[T]he primary purpose of the prevailing wage law is to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector." *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 91, 431 N.E.2d 311, 313 (1982). Through R.C. 4115.03-.16, the General Assembly has provided "a comprehensive statutory procedure for effecting compliance with the prevailing wage law through administrative and civil proceedings." *State ex rel. Harris v. Williams*, 18 Ohio St. 3d 198, 200, 480 N.E.2d 471, 472 (1985).

Pursuant to R.C. 4115.10(A), the prevailing wage law applies to all construction projects that are public improvements.[4] *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St. 3d 366, 369, 575 N.E.2d 134, 137 (1991);[5] *Harris v. City of*

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[3]R.C. 4115.99 provides as follows:

> (A) Whoever violates section 4115.08 or 4115.09 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.
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> (B) Whoever violates division (C) of section 4115.071, section 4115.10, or 4115.11 of the Revised Code is guilty of a misdemeanor of the second degree for a first offense; for each subsequent offense such person is guilty of a misdemeanor of the first degree.

[4]Exceptions to Ohio's prevailing wage law are set forth in R.C. 4115.04(B). None of the exceptions are pertinent to your specific inquiry.

[5]On August 14, 1991, the Ohio Supreme Court decided *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St. 3d 366, 369, 575 N.E.2d 134, 137 (1991). Subsequent to this decision, the court on October 8, 1991, *sua sponte* ordered a rehearing of the case. *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 62 Ohio St. 3d 1427, 578 N.E.2d 819 (1991). Because none of the parties requested a rehearing and no new evidence or argument was presented, the court on December 6, 1991, vacated its order

Cincinnati, 79 Ohio App. 3d 163, 169, 607 N.E.2d 15, 18 (Hamilton County 1992). R.C. 4115.10(A) states, in part:

> *No person, firm, corporation, or public authority that constructs a public improvement with its own forces*, the total overall project cost of which is fairly estimated to be more than the amounts set forth in division (B)(1) or (2) of section 4115.03 of the Revised Code, adjusted biennially by the administrator of employment services pursuant to section 4115.034 of the Revised Code, *shall violate the wage provisions of sections 4115.03 to 4115.16 of the Revised Code, or suffer, permit, or require any employee to work for less than the rate of wages so fixed, or violate the provisions of section 4115.07 of the Revised Code.* (Emphasis added.)

See R.C. 4115.05 ("[e]very contract for a public work shall contain a provision that each laborer, workman, or mechanic, employed by such contractor, subcontractor, or other person about or upon such public work, shall be paid the prevailing rate of wages provided in this section"); *see also* R.C. 4115.04(A) ("[e]very public authority authorized to contract for or construct with its own forces a public improvement ... shall have the bureau of employment services determine the prevailing rates of wages of mechanics and laborers in accordance with [R.C. 4115.05] for the class of work called for by the public improvement"). Thus, resolution of your first question turns on whether the erection of a building addition on park district property by a nonprofit corporation that uses no public moneys to erect the building addition and donates the completed building addition to the park district constitutes the "construction" of a "public improvement," and thereby falls within the scope of R.C. 4115.10(A). *See, e.g.*, 1987 Op. Att'y Gen. No. 87-028; 1987 Op. Att'y Gen. No. 87-007; 1982 Op. Att'y Gen. No. 82-079; *see also* 1984 Op. Att'y Gen. No. 84-035 at 2-106 ("in order for prevailing wage standards to apply, a public improvement must be constructed by or for a public authority within the meaning of R.C. 4115.03").

The terms "construction" and "public improvement," as they are used in R.C. 4115.03-.16, are defined in R.C. 4115.03 as follows:

> (B) "Construction" means either of the following:
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> (1) Any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than fifty thousand dollars adjusted biennially by the administrator of the bureau of employment services pursuant to section 4115.034 of the Revised Code 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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> (2) Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement, the total overall project cost of which is fairly estimated to be more than fifteen thousand dollars adjusted biennially by the administrator pursuant to section 4115.034 of the Revised Code and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority.

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granting a rehearing. *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 62 Ohio St. 3d 1214, 582 N.E.2d 606 (1991).

> (C) "Public improvement" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority of the state or any political subdivision thereof or by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof. When a public authority rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by a public authority is a "public improvement."

As defined in R.C. 4115.03(B)(2), the term "construction" includes any "reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement." "Consonant therewith, it has been stated in prior Attorney General opinions that the language of R.C. 4115.03(B) contemplates any activity that results in a major change in the form or overall physical structure of a particular building, structure, or other property." 1987 Op. Att'y Gen. No. 87-028 at 2-202; *see* 1979 Op. Att'y Gen. No. 79-046 at 2-148; 1977 Op. Att'y Gen. No. 77-076 at 2-266; 1976 Op. Att'y Gen. No. 76-041 at 2-142; 1971 Op. Att'y Gen. No. 71-054 at 2-186. The erection of an addition to a building that creates increased office space and an area in which to conduct public programs clearly results in either the enlargement or alteration of the building or a major change in both the physical structure of the building and the property upon which it is situated. Accordingly, the erection of a building addition is included within the scope of the term "construction," as defined in R.C. 4115.03(B).

Let us now determine whether the erection of the building addition, as described in the original plan, constitutes a "public improvement," as defined in R.C. 4115.03(C). In order for a construction project to come within the definition of "public improvement" set forth in R.C. 4115.03(C), the construction must be undertaken either "by a public authority of the state or any political subdivision thereof" or "by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof." *See* 1984 Op. Att'y Gen. No. 84-035 at 2-106; *see also Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St. 3d at 369, 575 N.E.2d at 137; *Harris v. City of Cincinnati*, 79 Ohio App. 3d at 169, 607 N.E.2d at 18-19. For purposes of R.C. 4115.03-.16, the term "public authority" is defined as follows:

> "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.

R.C. 4115.03(A).

A nonprofit corporation is not an officer, board, commission, or political subdivision of the state. Pursuant to R.C. 1702.04(A), a nonprofit corporation may be formed by any person,[6] acting singly or jointly with others, signing and filing with the Secretary of State

[6]As used in R.C. Chapter 1702, the term "[p]erson" includes, but is not limited to, "a nonprofit corporation, a corporation for profit, a partnership, an unincorporated society or association, and two or more persons having a joint or common interest." R.C. 1702.01(J). "[T]he word 'person,' as defined in R.C. 1702.01(J), does not include governmental entities

articles of incorporation. The articles of incorporation must include the nonprofit corporation's name, the place in Ohio where its principal office is to be located, the corporation's purpose or purposes, and the names and addresses of not less than three natural persons who are to be initial trustees of the nonprofit corporation. R.C. 1702.04(A)(1)-(4). The articles of incorporation may also include additional information relating to initial members of the nonprofit corporation, qualifications for membership, classification of members, and certain other matters. R.C. 1702.04(B)(1)-(7).

The general authority of a nonprofit corporation and the functions it may perform are described in R.C. 1702.12, and are, in large part, the same as those permitted a corporation for profit under the general corporation law. *See* R.C. 1701.13. In addition, a nonprofit corporation's specific powers are derived from its articles of incorporation and code of regulations. 1979 Op. Att'y Gen. No. 79-061 at 2-204; *see* R.C. 1702.04.

Accordingly, a nonprofit corporation formed under R.C. Chapter 1702, as a general rule, is neither established by, nor functions as, an agency of state or local government.[7] *See generally* 1995 Op. Att'y Gen. No. 95-018 at 2-105 ("[b]ecause the library you describe was created as a nonprofit corporation in accordance with either R.C. Chapter 1702 or R.C. Chapter 1713 (educational corporations), it was not created as a division of the state by authority of the state"). To the contrary, a nonprofit corporation is a private, nongovernmental entity. *See generally* 1979 Op. Att'y Gen. No. 79-061 at 2-204 ("[a] privately organized entity that performs a public purpose occupies a status no different from that of countless other non-profit corporations, the private nature of which is indisputable"). *Cf. also* 1999 Op. Att'y Gen. No. 99-028 (a nonprofit corporation established under R.C. Chapter 1702 and

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or the officers thereof." 1996 Op. Att'y Gen. No. 96-028 at 2-103; *accord* 1979 Op. Att'y Gen. No. 79-055 at 2-184.

[7]1999 Op. Att'y Gen. No. 99-028 at 2-188 and 2-189 stated that there are instances in which courts have held that publicly-funded nonprofit corporations are public offices or public bodies subject to the Ohio public records law, R.C. 149.43, and the Ohio open meetings law, R.C. 121.22. None of the cases cited in that opinion, however, is controlling for purposes of determining what constitutes a "public authority" for purposes of R.C. 4115.03-.16. As explained in 1999 Op. Att'y Gen. No. 99-028 at 2-189:

> The determination of "whether a particular entity is public or private ... depends on the specific statutory purpose for which the determination is being made." 1995 Op. Att'y Gen. No. 95-001 at 2-4. For purposes of the public records law and the open meetings law, the terms "public office" and "public body" have express statutory definitions. *See* R.C. 149.011(A); R.C. 121.22(B)(1). These definitions have been construed expansively and are not limited to entities that are actual government agencies. *See State ex rel. Freedom Communications, Inc.*, 82 Ohio St. 3d at 579, 697 N.E.2d at 212 ("[a]n entity need not be operated by the state or a political subdivision thereof to be a public office under R.C. 149.011(A)"). Because of this difference in the scope of the definitions, even though the Ohio Historical Society had conceded that it was a public office for purposes of Ohio's public records law in the case of *State ex rel. Fenley v. Ohio Historical Society*, 64 Ohio St. 3d 509, 597 N.E.2d 120 (1992), this did not preclude the court in the later case of *Ohio Historical Society v. State Employment Relations Board* [,66 Ohio St. 3d 466, 613 N.E.2d 591 (1993)] from finding that the Society was not a state agency or an arm of the state for purposes of the public employees' collective bargaining law.

recognized by a board of county commissioners as a convention and visitors' bureau is not a "county board" for purposes of receiving legal counsel or representation from the county prosecuting attorney).

You have also stated in your letter that the nonprofit corporation does not receive any public moneys from any source. The nonprofit corporation, therefore, is not an institution supported in whole or in part by public funds. Because the nonprofit corporation is not an officer, board, commission, or political subdivision of the state, or an institution supported in whole or in part by public funds, it is not a "public authority," as defined in R.C. 4115.03(A). *Cf.* 1984 Op. Att'y Gen. No. 84-035 at 2-107 ("[a] county agricultural society is ... a public authority subject to the prevailing wage laws to the extent that such a society expends public funds toward the purchase or lease of a public improvement"). The building addition thus will not be constructed by a public authority.

Moreover, under the original plan, the building addition will not be constructed "pursuant to a contract with a public authority." R.C. 4115.03(C). Although a park district created pursuant to R.C. Chapter 1545 is a "public authority," as defined in R.C. 4115.03(A),[8] you have indicated that there will be no contracts or agreements between the park district and the nonprofit corporation concerning the construction of the building addition.[9] Rather, the nonprofit corporation intends to negotiate and enter into contracts pertaining to the construction of the building addition with parties other than the park district. The nonprofit corporation will also be responsible for overseeing all work done in conjunction with the construction project. The park district thus will not be a party to any of the construction contracts, nor will it have any responsibility for the construction of the project.

Upon completion, the nonprofit corporation will donate the building addition to the park district. The nonprofit corporation will retain no rights to, or control over, the building addition. The building addition is to be a gift from the nonprofit corporation to the park district.[10]

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[8]Pursuant to R.C. 4115.03(A), a political subdivision of the state is a "public authority" for purposes of the state prevailing wage law. In *Village of Willoughby Hills v. Board of Park Comm'rs*, 3 Ohio St. 2d 49, 51, 209 N.E.2d 162, 163 (1965), the Ohio Supreme Court stated that a park district organized under R.C. Chapter 1545 is "a political subdivision of the state of Ohio which performs a function of the state that is governmental in character." *See generally* 1972 Op. Att'y Gen. No. 72-035 (syllabus) ("[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority"). Accordingly, a park district created pursuant to R.C. Chapter 1545 is a "public authority," as defined in R.C. 4115.03(A).

[9]In your letter, you state that the nonprofit corporation will construct the building addition upon obtaining the consent of the park district. Because you have indicated that there will be no contracts or agreements between the park district and the nonprofit corporation concerning the construction of the building addition, it is assumed, for purposes of this opinion, that the park district's consent to having the building addition constructed on park district property is not a form of consideration for the nonprofit corporation's decision to construct the building addition.

[10]R.C. 1545.11 authorizes a park district to accept donations of money or other property.

Based on the facts presented, it appears that, under the original plan, the nonprofit corporation will not construct the building addition pursuant to a contract with the park district or other public authority.[11] The erection and subsequent donation of the building addition by the nonprofit corporation thus will not constitute the construction of a "public improvement," as defined in R.C. 4115.03(C). In such a circumstance, the nonprofit corporation will not be required to comply with the state prevailing wage law. *See Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (construction projects financed with R.C. Chapter 140 bonds are not "public improvements" as defined in R.C. 4115.03(C) that are subject to the prevailing wage law when the construction is not pursuant to a contract with a public authority); 1982 Op. Att'y Gen. No. 82-079 (if a political subdivision is not a party to a contract to rehabilitate a private residence, any construction done under such contract does not constitute a "public improvement" for purposes of the state prevailing wage law).

This conclusion is in accord with 1949 Op. Att'y Gen. No. 716, p. 365, which advised as follows:

> Where construction takes place on public land financed in full by private funds and is not the result of a contract between the private contractor and the public authority, and title to the structure rests in private hands until construction is completed, whereupon it will be transferred as a gift to the public authority, the provisions of Section 17-4 of the General Code [now R.C. 4115.04], relating to prevailing wages on a public improvement do not apply.

Id. (syllabus, paragraph one).

In reaching this conclusion, the opinion examined the following language from G.C. 17-4 (now R.C. 4115.04):

> It shall be the duty of every public authority authorized to contract for or construct with its own forces for a public improvement, before advertising for bids or undertaking such construction with its own forces, to have the department of industrial relations ascertain and 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; and 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.

See generally 1935 Ohio Laws 206 (Am. S.B. 294, filed May 20, 1935) (setting forth the language of G.C. 17-4 cited in 1949 Op. Att'y Gen. No. 716, p. 365).

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[11]Because the building addition is to be constructed on park district property and donated as a gift to the park district for use as office space and a place for conducting public programs, it is reasonable to presume that park district officials will be involved in the discussions and negotiations concerning the construction of the building addition. It is possible, for example, that park district officials will be permitted to express their preferences with respect to the addition's approximate location, its exterior architecture, and its interior design and floor plan. This participation by park district officials does not, however, transform the gift into a contract, nor does it mean that the building addition will be constructed "pursuant to a contract with a public authority" for purposes of the prevailing wage law.

In construing this statute, the opinion states that, insofar as G.C. 17-4 is a penal statute that must be strictly construed, the duty imposed by G.C. 17-4 only arises when a public authority contracts for the construction of a public improvement, or constructs a public improvement with its own forces. Where a public authority neither contracts for the construction of a public improvement, nor constructs a public improvement with its own forces, G.C. 17-4 does not apply. *See Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*; 1982 Op. Att'y Gen. No. 82-079.

Additionally, the 1949 opinion reviewed the definition of "public improvement" set forth in G.C. 17-3 (now R.C. 4115.03). At the time this statute defined a "public improvement" as including "all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works and all other structures or works constructed by the state of Ohio or any political subdivision thereof." *See generally* 1935 Ohio Laws 206 (Am. S.B. 294, filed May 20, 1935) (setting forth the language of G.C. 17-3 cited in 1949 Op. Att'y Gen. No. 716, p. 365). The opinion determined that, under this definition, in order for a construction project to be deemed a "public improvement," the project must be constructed by the State of Ohio or a political subdivision thereof. If a project is not constructed by the State of Ohio or a political subdivision thereof, or by a contractor in privity with either, the project does not constitute a "public improvement," for purposes of requiring the payment of prevailing rates of wages.[12]

The essential terms of the statutory provisions examined in 1949 Op. Att'y Gen. No. 716, p. 365, which now appear in R.C. 4115.03 and R.C. 4115.04, have remained unchanged throughout the years that have followed the issuance of that opinion. Moreover, it is our view that the reasoning and determinations set forth in that opinion remain persuasive and authoritative. *See Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*; 1982 Op. Att'y Gen. No. 82-079. Therefore, we are of the opinion that a nonprofit corporation is not required to comply with the state prevailing wage law when it uses private moneys to construct a building addition that, upon its completion, is to be donated to a park district, provided that the nonprofit corporation and the park district have not entered into any contracts concerning the construction of the building addition.

In view of our answer to your first question, we need not address your second question and the alternative plan described therein.

In conclusion, it is my opinion, and you are hereby advised that a nonprofit corporation is not required to comply with R.C. 4115.03-.16, the state prevailing wage law, when it uses private moneys to construct on park district property a building addition that, upon its completion, is to be donated to the park district, provided that the nonprofit corporation and the park district have not entered into any contracts concerning the construction of the building addition. (1949 Op. Att'y Gen. No. 716, p. 365, syllabus, paragraph one, approved and followed.)

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[12]In 1976, the definition of the term "public improvement" set forth in R.C. 4115.03(C) was amended to expressly include construction projects undertaken by a person "pursuant to a contract with a public authority." *See* 1975-1976 Ohio Laws, Part II, 3729 (Am. H.B. 1304, eff. Aug. 25, 1976).