

OPINION NO. 70-086

Syllabus:

When contracts are entered into by the Department of Natural Resources without competitive bidding and the amount of the contract exceeds \$2,000.00, but is less than \$10,000.00, the Department is required to follow Section 4115.04, Revised Code, as to paying the prevailing rate of wages.

To: William O. Walker, Director, Dept. of Industrial Relations, Columbus, Ohio
By: Paul W. Brown, Attorney General, July 16, 1970

Your request for my opinion reads as follows:

"Your opinion is requested on the following facts as applied to Chapter 4115 of the Ohio Revised Code.

"Section 1501.11 of the Ohio Revised Code gives authority to the Department of Natural Resources, State of Ohio, to prepare plans and specifications and to enter into contracts for the construction, repairing or maintenance of public facilities which are vested in that department.

"For projects costing \$10,000.00 or less, the Department of Natural Resources may enter into contracts without competitive bidding for furnishing labor or labor and materials to perform work as provided for in the Appropriations Act under Section 13 of Amended House Bill 31.

"When contracts are entered into by the Department of Natural Resources without competitive bidding and the amount of the contract exceeds \$2,000.00 but is less than \$10,000.00 is the Department of Natural Resources required to follow section 4115.04 of the Ohio Revised Code as to paying the prevailing rate of wages?"

The answer to the question of whether a prevailing wage must be paid under the circumstances posed in the foregoing question turns upon an interpretation of Section 4115.04 of the Revised Code. To better understand Section 4115.04, supra, definitions of the terms used therein are necessary. These definitions are contained in Section 4115.03, Revised Code, which reads as follows:

"(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, 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.

"(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."

That part of Section 4115.04, Revised Code, which is pertinent to your inquiry, reads 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 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 * * *"

In the situation presented in your letter, the public authority, i. e., the Department of Natural Resources, has the power to contract for the construction of the public improvement without going through the competitive bidding procedure when the contract exceeds \$2,000.00, but is less than \$10,000.00, per Section 13 of Amended House Bill 31.

Section 4115.04, supra, imposes a duty upon every public authority authorized to contract for the construction of a public improvement to have the Department of Industrial Relations determine the prevailing rate of wages.

Under Section 4115.04, supra, the prevailing wages must be determined in two situations: (1) when the public authority contracts for the construction of the public improvement, and (2) when the public authority constructs the

public improvement with its own forces. In the instant case, the former situation is at issue.

The question to be interpreted seems to be whether the legislature intended to cover all contracts, whether let by competitive bidding or not.

Since Section 4115.04, supra, has been held to be a "minimum wage law" (See Dennis v. Young, 46 Ohio Op. 2d 364, 1967), the most reasonable interpretation would be that the legislature did not intend to limit the application of this section only to contracts let by competitive bidding.

That this interpretation was intended can be implied by the legislature's use of the words "any", "all", and "every" in Sections 4115.03 and 4115.04, supra. These words are all-inclusive. Webster's New Collegiate Dictionary, p. 285, defines "every" as "each, without exception". The word "any" is equivalent to and has the force of "every" or "all". (See Motor Cargo, Inc. v. Board of Township Trustees, 52 Ohio Op. 257, 1953.)

Therefore, in view of the foregoing, it is my opinion, and you are hereby advised that when contracts are entered into by the Department of Natural Resources without competitive bidding and the amount of the contract exceeds \$2,000.00, but is less than \$10,000.00, the Department is required to follow Section 4115.04, Revised Code, as to paying the prevailing rate of wages.