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PREVAILING WAGE RATE--APPLICABLE TO FULL-TIME REGULAR SALARIED EMPLOYEES OF MUNICIPAL CORPORATION; WHEN--§§4115.03, 4115.04, 4115.05, 4115.06--R.C.

SYLLABUS:

The provisions of Sections 4115.03 to 4115.06, inclusive, Revised Code, are applicable to full-time regular salaried employees of a municipal corporation where such employees are constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, inclusive, Revised Code, unless such municipal corporation has adopted a charter under the Ohio Constitution and has adopted its own civil service regulations on employment pursuant to such charter.

Columbus, Ohio, March 9, 1960

Hon. C. H. Anderson, Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In re: Your Opinion No. 958, in which you hold that Sections 4115.03 to 4115.06, inclusive, Revised Code, are applicable to full time regular salaried employes of a county engineering department.

"I have before me a copy of the above opinion and also a request from Bruce Birrell, City Solicitor of the City of Warren, Ohio, to obtain a further ruling from you as to whether or not this opinion applies equally to municipalities as well as counties."

The syllabus of Opinion No. 958, Opinions of the Attorney General for 1959, issued on November 24, 1959, reads :

"The provisions of Sections 4115.03 to 4115.06, inclusive, Revised Code, are applicable to full-time regular salaried employees of a county engineering department where such employees are constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, Revised Code."

You ask whether the provisions of Sections 4115.03 to 4115.06, inclusive, Revised Code, pertaining to the payment of the prevailing wage rate, are applicable to full-time regular salaried employees of a municipal corporation where such employees are constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, inclusive, Revised Code.

Regarding the payment of the prevailing wage rate, Section 4115.04, Revised Code, states in part :

"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. * * *." (Emphasis added)

In Section 4115.05, Revised Code, it is stated :

"The 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 than the wages paid in the same trade or occupation in the locality where such public work is being performed, * * *. The wages to be paid for a legal day's work, to laborers, workmen, or mechanics, upon any material to be used upon or in connection therewith, shall not be less than the prevailing rate for a day's work in the same trade

or occupation in the *locality within the state where such public work on*, about, or in connection with such labor is performed in its final or completed form is to be situated, erected, or used * * *.” (Emphasis added)

Also, Section 4115.06, Revised Code, reads in part :

“* * *

“Where a public authority constructs a public improvement *with its own forces* such public authority shall pay a rate of wages which shall *not be less* than the rate of wages fixed as provided in section 4115.04 of the Revised Code.* * *” (Emphasis added)

Section 4115.03, Revised Code, defines “public authority,” “construction,” “public improvement,” and “locality,” reading as follows :

“As used in sections 4115.03 to 4115.10, inclusive, of the Revised Code :

“(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, or repair of any public improvement fairly estimated to cost more than three hundred dollars.

“(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.

“(D) ‘Locality’ means the county wherein the physical work upon any public improvement is being performed.”

(Emphasis added)

A municipal corporation is a political subdivision of the state, and is authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, and, therefore, is a “public authority” within the purview of Section 4115.03, *supra*. Under Section 4115.06, *supra*, therefore, where a municipal corporation constructs a public improvement with its own forces such

municipal corporation should pay a rate of wages which are not less than the rate of wages fixed as provided in Section 4115.04, *supra*. Further, as stated in Opinion No. 958, *supra*, it is my opinion that "direct employment of labor" as used in Section 4115.03, *supra*, includes regular employees who are used in the construction of a public improvement. It follows, therefore, that Sections 4115.03 to 4115.06, inclusive, Revised Code, are applicable to full-time regular salaried employees of a municipal corporation where such employees are constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, inclusive, Revised Code.

In the case of *Craig, Appellant, v. City of Youngstown, Appellee*, 162 Ohio St., 215 (1954), the court had before it a question on the applicability of the prevailing wage law to a particular municipal corporation, the headnote of the case reading :

"A city which has adopted a charter under the Home-Rule Amendment to the Ohio Constitution and has adopted civil service regulations consistent with the statutes with respect to civil service is not amenable to the provisions of Section 17-3 *et seq.*, General Code (Section 4115.03 *et seq.*, Revised Code), commonly referred to as the Prevailing Wage Law, with respect to the construction of public improvements with its classified civil service employees."

At page 220 of the opinion by Middleton, J., it is stated :

"In our judgment, the Home-Rule Amendment to the Ohio Constitution empowers municipalities to enact and enforce civil service regulations with respect to employment, unaffected by the Prevailing Wage Law. This power is vested in municipalities not only by the constitutional grant but by Section 4214, General Code, above quoted. To enforce the provisions of the Prevailing Wage Law (comprising Sections 17-1 to 17-6, General Code) would be to ignore the provisions of Section 4214. To sustain the plaintiff's contention in this case would be to substitute a determination of the rates of pay by negotiation between labor unions and other employers for a determination by the council of the municipality. We do not believe that such was the legislative intent. However, in any event, the home-rule powers of the city would govern."

Section 4214, General Code, referred to in the above language, is now Section 731.08, Revised Code, and provides the authority for the legislative authority of a city to hire employees and to fix their com-

pensation. The court in the *Craig case, supra*, raised the question of whether the then existing Section 4214, General Code, should take precedence over the prevailing wage law with regard to the salaries of municipal employees, but did not decide this issue. As clearly shown by the headnote of the case, the decision was based on the home-rule power of the municipal corporation concerned and I do not feel that the mere raising of said question by the court should govern my opinion in the instant case.

To hold that Section 731.08, Revised Code, as pertaining to the fixing of salaries by the municipal council, should take precedence over Sections 4115.03 *et seq.*, Revised Code, pertaining to the prevailing wage law, would render such wage law invalid as to employees of municipal corporations, and probably as to employees of other authorities. In addition to municipal councils having statutory authority to set the salaries of employees, all public authorities have statutory authority to fix the salaries of their employees. If these salary statutes are to govern over the prevailing wage law then such wage law can never be applied in such instances. Further, since municipal corporations, counties, and other authorities also have specific procedures for contracts and bidding, such interpretation could have the effect of invalidating the entire prevailing wage law, as it might be argued that such specific procedures should take precedence over such wage law. Such could not have been the intent of the legislature in enacting the prevailing wage law since it must be assumed that the legislature intended the law to apply to public authorities or it would not have enacted such law. (See 37 Ohio Jurisprudence, Section 438, page 768).

In reviewing the sections here concerned, I am of the opinion that Section 731.08, *supra*, and Sections 4115.03 to 4115.06, inclusive, Revised Code, so far as they deal with wages of employees are in *pari materia* and should be read together. (See 37 Ohio Jurisprudence, Section 331, page 594.) Accordingly, under Section 731.08, Revised Code, a municipal council may set the salaries of municipal employees, but such salaries are subject to Sections 4115.03 to 4115.06, inclusive, Revised Code, where such sections apply. Under the decision in the *Craig case, supra*, however, where a municipal corporation has adopted a charter and has regulated the salaries of its employees pursuant to said charter, the state statutes pertaining to prevailing wages are not applicable to said employees.

Answering your question, therefore, it is my opinion and you are advised that the provisions of Sections 4115.03 to 4115.06, inclusive, Revised Code, are applicable to full-time regular salaried employees of a municipal corporation where such employees are constructing a public improvement within the meaning of Sections 4115.03 to 4115.06, inclusive, Revised Code, unless such municipal corporation has adopted a charter under the Ohio Constitution and has adopted its own civil service regulations on employment pursuant to such charter.

Respectfully,

MARK McELROY
Attorney General