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CONTRACTS—EXTRA WORK CONTRACTS—SECTION 5525.14 RC, AM SB 250, 101 GA, EFFECTIVE SEPTEMBER 30, 1955—NO APPLICATION TO CONTRACTS EXISTING PRIOR TO SUCH DATE.

SYLLABUS:

The provisions of Section 5525.14, Revised Code, as amended by Amended Senate Bill No. 250, 101st General Assembly, effective September 30, 1955, have no application to contracts existing prior to such date.

Columbus, Ohio, September 27, 1955

Hon. S. O. Linzell, Director, Department of Highways
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Amended Senate Bill No. 250 as passed by the 101st Gen-

eral Assembly amended Section 5525.14, Revised Code, so as to permit the increase of quantities of any item in state highway contracts, without extra work contracts, twenty percent but not exceeding \$5,000. The limitation of the former section was \$2,000.

"I understand the amended law will go into effect on September 30, 1955.

"You are requested to advise whether this amended section will apply to existing contracts or only to those contracts entered into after September 30, 1955. Of course there will be instances where the contractor feels he bid too low on an item and in such cases I understand that an additional burden could not be imposed upon him. However, in most instances the contractor would be agreeable to following the new law and it will be to the advantage of the department to follow the amended law."

There are several reasons why the amendment here in question cannot be deemed to affect contracts existing on the effective date of the new act. In the first place it is provided in Article I, Section 10, U. S. Constitution, that:

"No State shall * * * pass any * * * law impairing the obligation of contracts * * *"

By reason of this limitation it would obviously be impossible, as you suggest, to impose on a contractor any burden in addition to that for which he is responsible under a contract existing on the effective date of the enactment here in question. However, it must be borne in mind that all laws relating to contracts, in existence at the time of their execution, are deemed a part of such contracts as though fully written therein. Accordingly, in the instant case, the director was under an obligation not to "increase the quantities" to be supplied thereunder by an amount in excess of \$2,000. This obligation may not be changed by legislative act.

A similar limitation is set out in Article II, Section 28, Ohio Constitution; and this section forbids also the passage of "retroactive laws." To make this newly enacted statute applicable to existing contracts would, in my view, be tantamount to giving it retroactive effect contrary to this limitation on the power of the General Assembly.

There could, of course, where private parties are involved, be a novation whereby a new contract is substituted for the old by agreement of the parties, but this would not be possible where state contracts are in-

volved in view of the formalities required by statute for the execution of such contracts; and, of course, Section 5525.14, Revised Code, clearly contemplates the unilateral variation of the original terms of an existing contract.

I may add that I do not regard the creation of mutual rights and obligations by contract as a "pending proceeding" within the meaning of Section 1.20, Revised Code, although, as pointed out in Opinion No. 2287, Opinions of the Attorney General for 1947, p. 519 (522), the "courts have been quite liberal in their views as to what shall be regarded as a pending proceeding." This statute does, however, emphasize the legislative policy of insuring against the use of language which may be thought to act retroactively rather than prospectively only. It is scarcely necessary to add that there is no suggestion in the act here under scrutiny that it was intended to apply other than prospectively, or more precisely, to existing contracts.

Accordingly, it is my opinion that the provisions of Section 5525.14, Revised Code, as amended by Amended Senate Bill No. 250, 101st General Assembly, effective September 30, 1955, have no application to contracts existing prior to such date.

Respectfully,
C. WILLIAM O'NEILL
Attorney General