

3570.

PUBLIC FUNDS—MAY NOT BE EXPENDED BY SUBDIVISIONS FOR ASSESSMENT OF CODE ENFORCEMENT ON FORCE ACCOUNT WORK.

SYLLABUS:

A county, municipality, township or school district may not legally expend public funds for the payment of an assessment for Code enforcement on work done by force account by such political subdivision.

COLUMBUS, OHIO, December 5, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The code authorities for the enforcement of a Contractor’s Code have requested the officials of various cities in Ohio to pay from public funds, for code enforcement, under the provisions of the National Industrial Recovery Act, on all work performed by force account where the amount is in excess of \$2000, at the rate of one-tenth of one per cent.

Will you kindly advise this Department whether there is any legal authority for the expenditure of public funds of a county, a municipality, a school district or a township, for this purpose.”

The pertinent provisions of the Code of Fair Competition for the General Contractors Division of the construction industry are as follows:

Article I, Section 1:

“The term ‘general contractor’ is hereby defined to mean without limitation any individual, partnership association, trust, trustee, trustee in bankruptcy, receiver, corporation or agency which undertakes, whether by formal contract or otherwise, to direct, superintend, coordinate and execute either directly or through others, the work of constructing, substantially in its entirety, any fixed structural or physical improvement, or a modification thereof, or an addition or repair thereto, excluding any such operation aggregating in its entirety less than the sum of \$1,000.00 * * *”

Article II, Section 2:

“It is authorized under the supervision of and in cooperation with the Construction Code Authority in the exercise of the power conferred upon it in Section 2(d) of Article IV, A of Chapter I to require the registration in such manner as it may deem appropriate of all construction work undertaken by general contractors as herein defined exceeding two thousand dollars (\$2,000.00) in value, and, in order to defray the expenses of such registration, of the collection of the reports and the data herein required and of the administration of this code, to charge and collect as a registration fee not to exceed one tenth of one per cent of the value of the work. From the funds so collected, The Divisional

Code Authority shall defray its expenses, and the general contractors' proportionate share of the expenses of the Construction Code Authority, in administering this Code, and make an equitable apportionment between the Divisional Code Authority and the subdivisional committees of agencies as shall cooperate in procuring the registration of such work or services. * * *

The pertinent parts of House Bill No. 705, enacted at the regular session of the 90th General Assembly, are as follows:

Section II:

"* * * The governor, or the director of any department to whom, or any commission to which, the governor may delegate any of his functions and powers under this act, may call upon any research agency maintained by the state or by any educational institution supported in whole or in part by state funds, or upon any officers or employes of any county, municipal corporation, township or school district in this state for aid in carrying out his or its functions under this act."

"Section 9. As used in this act:

The term 'person' includes any individual, partnership, commission, trust or corporation. * * *

It is to be noticed that nowhere in the Code itself or in House Bill No. 705 is any mention made relative to political subdivisions of the state paying this assessment. Without going into the question of the power of the Federal Government to force the political subdivisions of the state to pay this assessment, it is sufficient to note that the Federal Government has not seen fit to do so. The power of a political subdivision to expend public money is carefully limited by the courts and in the absence of statutory authority for an expenditure, such power does not exist.

After an examination of House Bill No. 705 and the statutes relative to the expenditure of public funds, I am unable to find any authority for the political subdivisions to pay the assessment in question. That the conclusion above expressed is the general understanding among Code authorities and the Trade itself is shown in an article appearing in the November, 1934 issue of "The Constructor", a national journal, having a circulation among contractors.

In this opinion I assume that no part of the money to be spent on this force account work is money secured from the Federal Government. It is therefore my opinion, in specific answer to your question, that a county, municipality, township or school district may not legally expend public funds for the payment of an assessment for Code enforcement on work done by force account by such political subdivision.

Respectfully,
JOHN W. BRICKER,
Attorney General.