

**OPINION NO. 84-010****Syllabus:**

The applicability of Ohio's Prevailing Wage Law, R.C. Chapter 4115, to projects funded in whole or in part through the issuance of hospital revenue bonds, pursuant to R.C. Chapter 140, is not affected by that portion of R.C. 140.051 which exempts contracts entered into pursuant thereto from restrictions or procedures imposed on a public hospital agency with respect to contracts.

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**To: James W. Harris, Director, Department of Industrial Relations, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 2, 1984**

I have before me your request for my opinion concerning the effect of a recent amendment to R.C. Chapter 140 on the continued application of the Ohio Prevailing Wage Law to certain projects funded in whole or in part through the issuance of hospital revenue bonds. As you note in your request, R.C. Chapter 140 sets forth the procedures for financing the acquisition or construction of hospital facilities through the issuance of revenue obligations by a public hospital agency. This law was amended in Am. Sub. S.B. 109, 114th Gen. A., (eff. March 23, 1981). One of the changes made by Am. Sub. S.B. 109 was the enactment of R.C. 140.051, which states:

If the costs of the hospital facilities are to be paid with funds derived from revenue obligations issued pursuant to section 140.06 of the Revised Code and with other funds derived from the nonprofit hospital agency, a public hospital agency, pursuant to negotiation and in the manner determined in its sole discretion by the governing body of the public hospital agency, may enter into a contract for the acquisition, construction, improvement, equipment, or furnishing of a hospital facility that is to be leased pursuant to section 140.05 of the Revised Code by a public hospital agency to a nonprofit hospital

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<sup>1</sup> Pursuant to R.C. 140.06(A), "[a] public hospital agency may issue revenue obligations. . .to pay the costs of hospital facilities." For the purposes of this provision a "public hospital agency" is defined to include a county, municipality, county hospital commission, joint township hospital district, a state or municipal college or university authorized to operate a hospital facility, or the state. R.C. 140.01(B).

agency. Any requirement of competitive bidding, other restriction, or other procedures that are imposed on a public hospital agency with respect to contracts is not applicable to any contract entered into pursuant to this section.

A hospital facility is not exempt from applicable zoning, planning, and building regulations by reason of being financed from the proceeds of obligations issued pursuant to this chapter. (Emphasis added.)

Your specific question is whether the above-emphasized language renders the prevailing wage requirements set forth in R.C. Chapter 4115<sup>2</sup> inapplicable to projects entered into pursuant to R.C. 140.051. The issue to be determined is whether the provisions of R.C. Chapter 4115 constitute an "other restriction, or other procedures" within the contemplation of R.C. 140.051.

As a general rule, statutory exceptions to the operation of laws, particularly those laws that are remedial in nature, should receive a strict construction. R.C. 1.11 (Remedial laws should be liberally construed); Ohio Boys Town v. Brown, 69 Ohio St. 2d 1, 429 N.E.2d 1176 (1982); Keller v. Forney, 108 Ohio St. 463, 141 N.E. 16 (1923); Menning v. Zangerle, 95 Ohio St. 1, 115 N.E. 498 (1916); Kroff v. Amrhein, 94 Ohio St. 282, 114 N.E. 267 (1916). The provisions of R.C. Chapter 4115 are properly characterized as remedial laws. "Remedial laws are those which, inter alia, promote justice or rectify past shortcomings in the law." 1980 Op. Atty Gen. No. 80-021 (Statute requiring local governments to bear the cost of medical examinations of sexual assault victims is a remedial law since it alleviates part of the victim's financial burden and serves to aid the state in its prosecution of sex offenders). See also State ex rel. National Mutual Ins. Co. v. Conn, 115 Ohio St. 607, 155 N.E. 138 (1927) (Statutes creating the office of superintendent of insurance business are remedial); Kroff v. Amrhein (Statute making adopted child equal of a natural child is a remedial law). The provisions of R.C. Chapter 4115 are remedial in nature because they were enacted to provide a remedy against the undercutting of employee wages in the private construction sector. The Ohio Supreme Court has expressed this purpose as follows:

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2 R.C. 4115.04 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 in accordance with section 4115.05 of the Revised Code for the class of work called for by the public improvement, in the locality where the work is to be performed.

R.C. 4115.06 requires, in all cases in which R.C. 4115.04 applies, that "the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed." R.C. 4115.08 states in pertinent part: "No public official. . . shall fail, before advertising for bids or undertaking such construction with his own forces, to have the department of industrial relations determine the prevailing rates of wages. . . as provided in section 4115.04 of the Revised Code." Similarly, R.C. 4115.09 prohibits a member of a public board, commission or other public authority from voting for the award of a contract for the construction of a public improvement or voting for the disbursement of funds for such construction if the requirements of R.C. 4115.04 are not satisfied. See R.C. 4115.03(A) (definition of a "public authority"); R.C. 4115.03(B) (definition of "construction"); R.C. 4115.03(C) (definition of "public improvement").

The prevailing wage law evidences a legislative intent to provide a comprehensive, uniform framework for, inter alia, worker rights and remedies vis-a-vis private contractors, sub-contractors and materialman engaged in the construction of public improvements in this state. The prevailing wage law delineates civil and criminal sanctions for its violation.<sup>3]</sup> Above all else, the 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. (Footnote added.)

State ex rel. Evans v. Moore, 69 Ohio St. 2d 88, 91, 431 N.E.2d 311, 313 (1982).

Accordingly, the provisions of R.C. Chapter 4115, as remedial laws, are required to be liberally construed. Conversely, any purported exception to such laws must be strictly construed.

A statute in order to be held an exception to the general provisions of another conferring power and limitation of power in an administrative board, must be couched in language so clear and unambiguous as to be free from doubt as to the intent of the legislature in declaring it to be an exception.

State ex rel. Stanton v. Andrews, 105 Ohio St. 489, 138 N.E. 873 (1922), overruled on other grounds, 41 Ohio St. 2d 157, 324 N.E.2d 285 (1975). Applying this standard to the provisions of R.C. 140.051, I find there is considerable doubt as to whether the General Assembly clearly intended to thereby exempt projects otherwise subject to the requirements of R.C. Chapter 4115.

R.C. 140.051 creates an exemption from the application of the provisions of R.C. Chapter 4115 only if those provisions are held to constitute an "other restriction, or other procedures" within the contemplation of R.C. 140.051. This interpretation of R.C. 140.051 would require the words "other restriction, or other procedures," to be read broadly to encompass, without limitation, any and all restrictions or procedures imposed upon a public hospital agency with respect to its contracts. Any such broad conclusion, however, would violate the well-established rule of statutory construction known as ejusdem generis. The principle of ejusdem generis is discussed by the Ohio Supreme Court in The Glidden Co. v. Glander, 151 Ohio St. 344, 350, 86 N.E.2d 1, 4 (1949) (citing Ohio Jurisprudence 779, Section 450) as follows:

In accordance with what is commonly known as the rule of ejusdem generis, where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation and as including only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. An explanation which has been given for the principle is that if the legislature had meant the general words to be applied without restriction it would have used only one compendious term. In accordance with the rule of ejusdem generis, such terms as "other," "other thing," "others," or "any other," when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described.

<sup>3</sup> It could be argued that because of the civil and criminal penalties that may be imposed for violations of the prevailing wage law, see R.C. 4115.10; R.C. 4115.99, the law is a penal law not entitled to liberal construction. In this respect, however, the prevailing wage laws are not different than the laws regulating insurance, see, e.g., R.C. 3901.41, R.C. 3901.99, which were held to be remedial in nature in State ex rel. National Mutual Ins. Co. v. Conn.

There are numerous examples in Ohio case law illustrating how the rule of ejusdem generis is to be applied. The Glidden court, for example, construed a statutory exemption from taxation for "stocks, bonds, treasury notes and other obligations of the United States" as embracing only indebtedness affecting the credit of the United States, and accordingly, held that a claim for a tax refund was not tax exempt. In State v. Aspell, 10 Ohio St. 2d 1, 225 N.E.2d 226 (1967), the Court held the terms "safe, vault, or depository box" did not embrace a cigarette vending machine. Applying the rule of ejusdem generis, the Court limited the term "depository box" to receptacles wherein valuables are placed for safekeeping by the owner to be retained by him in kind. In State v. Saionz, 23 Ohio App. 2d 79, 261 N.E.2d 135 (Lucas Co. 1969), the Court held that the words "otherwise cast contempt upon [a flag]" meant only acts of physical destruction or abuse similar in nature to those acts previously enumerated in the statute, i.e., "mutilating," "burning," "defacing," and that wearing a flag as a cape was not, therefore, prohibited. Most recently, the Supreme Court has held that the phrase "or other device" used in a statute declaring "[a]ny boat, net, seine, trap, ferret, gun, or other device used in the unlawful taking of wild animals" a public nuisance included automobiles. State v. Barker, 8 Ohio St. 3d 39, 40 \_\_\_, N.E.2d \_\_\_ (1983). The court expressly found that the classifications, "net, seine, trap, ferret [and] gun" were not relevant to motor vehicles and accordingly relied on the mention of the single term "boat" to support its conclusion.

Recognition of the ejusdem generis rule creates an ambiguity in the legislative intent underlying R.C. 140.051. It cannot be said that the General Assembly meant the general words "other restriction" or "other procedures" to be applied without restriction, since had it intended this result it would not have expressly mentioned competitive bidding. Rather, it must be presumed that the General Assembly intended the exception to embrace only restrictions or procedures similar in character to competitive bidding requirements. Accordingly, my task in construing R.C. 140.051 is to identify a sub-class of restrictions or procedures imposed on contracts that can be typified by competitive bidding requirements. One way to do this task is to first look at the purpose of such requirements. State v. Barker; The Glidden Co. v. Glander.

A common thread running through the case law interpreting competitive bidding requirements is that such requirements are intended to protect the public treasury from excessive costs and corrupt practices. See, e.g., United States Wood Preserving Co. v. Sundmaker, 186 F. 678, 682 (6th Cir. 1911) ("Laws which provide that public contracts shall be made with the lowest and best bidders. . .are enacted for the benefit of property holders and taxpayers. . .and are to be executed with sole reference to the public interest."); Boger Corp. v. Bd. of Commissioners, 60 Ohio App. 2d 195, 198, 396 N.E.2d 1059, 1061 (Stark Co. 1978) ("The overriding purpose of the legislature in compelling mandatory competitive bidding by public bodies for major construction projects. . .is to protect the taxpayer and users of the system against excessive costs and corrupt practices."); United States Construction and Consultants, Inc. v. Cuyahoga Metropolitan Housing Authority, 35 Ohio App. 2d 159, 163, 300 N.E.2d 452, 454 (Cuyahoga Co. 1973) ("Competitive bidding is well recognized in public matters because it. . .eliminates collusion, and saves taxpayers money. . .") It is, therefore, reasonable to conclude that by specifically mentioning competitive bidding, the General Assembly intended to limit the exception declared in R.C. 140.051 to restrictions or procedures designed to protect the public treasury. This limitation of the class included within the exception, which limitation is mandated by the ejusdem generis rule, is consistent with overall legislative intent, since the projects to which the exception applies do not involve the expenditure of tax funds.<sup>4</sup>

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<sup>4</sup> R.C. 140.06(C) states:

Such revenue obligations shall not be general obligations, debt, or bonded indebtedness of any public hospital agency. The holders or owners of the obligations shall not be given the right, and have no right, to have excises or taxes levied by a

Moreover, since the exception applies only "[i]f the costs of the hospital facilities are to be paid with funds derived from revenue obligations issued pursuant to section 140.06 of the Revised Code and with other funds derived from the nonprofit hospital agency," R.C. 140.051, it is likely that the General Assembly believed that the usual restrictions and procedures necessary to avoid excessive costs and to protect the public treasury would be unnecessary in this instance where the nonprofit agency would be independently motivated to contain costs. These same considerations do not, however, apply to contractual restrictions or procedures designed to further legislative goals unrelated to cost containment, such as the prevailing wage law. There would be no independent motivation to further such goals in this instance.

Accordingly, it is my opinion, and you are advised, that the applicability of Ohio's Prevailing Wage Law, R.C. Chapter 4115, to projects funded in whole or in part through the issuance of hospital revenue bonds, pursuant to R.C. Chapter 140, is not affected by that portion of R.C. 140.051 which exempts contracts entered into pursuant thereto from restrictions or procedures imposed on a public hospital agency with respect to contracts.

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public hospital agency for the payment of bond service charges thereon, and each such obligation shall bear on its face a statement to that effect and to the effect that the right to such payment is limited to the hospital receipts and special funds pledged to such purpose under the bond proceedings.