

A Project Partially Financed With Public Funds Does Not Automatically Trigger A Prevailing Wage Obligation

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The use of public funds on a portion of a project does not, by itself, require the payment of prevailing wages on the entire project. In Northwestern Ohio Building & Construction Trades Council v. Ottawa County Improvement Corporation, a unanimous Supreme Court of Ohio held that “the prevailing-wage law applies only when a public authority, including an institution, spends public funds to construct a ‘public improvement,’ which by definition must be constructed by a public authority or must benefit a public authority.” The Court issued its decision on June 30, 2009.

In this case, a company used public funds to finance the purchase of a building, the property on which the building was located, and office equipment for use inside the building. The company needed to renovate the building, but expended only private funds to finance that portion of the project. The company was going to use the building for its own private, for-profit business.

The Trades Council argued that regardless of whether the project meets the definition of “public improvement,” the company must pay prevailing wages on the project if it expends *any* public funds to finance the project. Its argument rested in large part on the prevailing wage law’s definition of “public authority,” which includes “any institution. . . supported in whole or in part by public funds” and which notes that

the prevailing wage chapter applies to “expenditures of such institutions made in whole or in part from public funds.” Its argument also relied upon a provision in Ohio prevailing wage law that prevents dividing a single public improvement project into separate components to avoid prevailing wage requirements.

The Court found that the public authority definition simply stresses that an institution that is supported in whole or in part by public funds cannot avoid paying prevailing wages merely because it used private funds to finance part of a project. The other requirements of the prevailing wage statute, such as whether a “public improvement” is being constructed, must still be satisfied.

Applying its holding to the facts of the case, the Court found that the project was not a “public improvement.” The only portion of the project that could be considered “construction” was the renovation portion, but it was financed with private funds only. Moreover, none of the project was intended to be used by or for any public authority. Therefore, the project was not subject to prevailing wage requirements.

Contractors, developers and public authorities engaged in projects to which the prevailing wage may be applicable will want to review this decision to determine its impact.

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