

740208.2

BOARDS OF COUNTY ROAD COMMISSIONERS: Prevailing wages on state projects.

LABOR: Prevailing wage statute.

COUNTIES: Boards of road commissioners.

HIGHWAYS AND ROADS: Prevailing wages to construct.

Provisions of statute requiring payment of prevailing wages and fringe benefits on state projects by state institutions apply to boards of county road commissioners when such boards use their allocated portions of the motor vehicle highway fund for the construction and reconstruction of county roads and state trunkline highways.

Opinion No. 4807

February 8, 1974.

Honorable Gary M. Owen
Michigan State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the question of whether the prevailing wage law set forth in 1965 PA 166 applies to county road commissions.

1965 PA 166, MCLA 408.551, *et seq*; MSA 17.256(1) *et seq*, is a statute requiring prevailing wage and fringe benefit clauses in contracts concerning projects financed in whole or in part by state funds. Pertinent sections of the statute read:

"Sec. 1. As used in this act:

"(a) . . .

"(b) 'State project' means any new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning or improvement of public buildings, works, bridges, highways or roads authorized by a contracting agent.

"(c) 'Contracting agent' means any officer, board or commission of the state, or any state institution supported in whole or in part by state funds, authorized to enter into a contract for a state project or to perform the same by the direct employment of labor.

". . ."

"Sec. 2. Every contract executed between a contracting agent and a successful bidder as contractor and entered into pursuant to advertisement and invitation to bid for a state project which requires or involves the employment of construction mechanics, other than those subject to the jurisdiction of the state civil service commission, and which is sponsored or financed in whole or in part by the state shall contain an express term that the rates of wages and fringe benefits to be paid to each class of mechanics by the bidder and all of his sub-contractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. Contracts on state projects which contain provisions requiring the payment of prevailing wages as determined by the United States secretary of

labor pursuant to the federal Davis-Bacon act (United States code, title 40, section 276a et seq.) or which contain minimum wage schedules which are the same as prevailing wages in the locality as determined by collective bargaining agreements or understandings between bona fide organizations of construction mechanics and their employers are exempt from the provisions of this act.”

Boards of county road commissioners are not designated by name as contracting agencies in Section 1(c), 1965 PA 166, *supra*. However, any state institution supported in whole or in part by state funds and authorized to contract for a state project are included within the statutory description of contracting agency.

The legislature is presumed to use particular words in statutes in the sense that the courts have theretofore interpreted them. *Baxter v Latimer*, 116 Mich 356; 74 NW 726 (1898). In *Michigan Good Roads Federation v State Board of Canvassers*, 333 Mich 352; 53 NW2d 481 (1952), the Michigan Supreme Court held that the several county road commissions are state institutions within the meaning of that term as used in Const 1908, art 5, § 1, the pertinent portion of which reads:

“The legislative power of the state of Michigan is vested in a senate and house of representatives; but the people reserve to themselves the power . . . to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. . . .”

The question that confronted the court in the *Michigan Good Roads Federation* case, *supra*, was whether the State Highway Department, the several county road commissions and incorporated cities and villages in receiving and using their statutorily allocated portions of the motor vehicle highway fund for road building projects were state institutions.

This determination was required in order that the court could decide the ultimate question of whether 1951 PA 54 which amended 1927 PA 150, MCLA 207.101 *et seq.*; MSA 7.291 *et seq.*, and which imposed a tax on motor fuel for the funding of the motor vehicle highway fund, came within the above constitutional prohibition with respect to referendum on legislative acts. A similar prohibition appears in Const 1963, art 2, § 9.

Currently, the motor vehicle highway fund, 1951 PA 51, § 10, MCLA 247.660; MSA 9.1097(10), pursuant to Const 1963, art 9, § 9, is sustained in large part by moneys collected through the so-called privilege tax imposed by 1927 PA 150, § 2, *supra*, amended by 1972 PA 326, MCLA 207.102; MSA 7.292, upon the sale of motor fuel for motor vehicles using the public highways. 1927 PA 150, § 18b, as amended by 1972 PA 326, MCLA 207.118b; MSA 7.308(2), reads:

“All sums of money received and collected under the provisions of this act, except the license fees provided for herein and after the payment of the necessary expenses incurred in the enforcement of this act, shall be deposited in the state treasury to the credit of the motor vehicle highway fund.”

1951 PA 51, MCLA 247.651 *et seq.*; MSA 9.1097(1) *et seq.*, provides for the classification of all public roads, streets and highways in Michigan and provides for the allocation of funds in the motor vehicle highway fund.

1951 PA 51, § 10, *supra*, as amended by 1972 PA 327, allocates moneys in the motor vehicle highway fund 44.5% to the Department of State Highways, 35.7% to the several county road commissions, and 19.8% to the incorporated cities and villages of the state to be distributed and used for highway purposes.

1951 PA 51, § 12, *supra*, as amended by 1972 PA 327, delineates the purposes for which the motor vehicle highway fund shall be used by the boards of county road commissions. 1951 PA 51, § 12(1), as amended by 1972 PA 327, MCLA 247.662; MSA 9.1097(12), reads:

“The amount allocated to the several county road commissions shall be returned to the county treasurers in the manner, for the purposes and under the terms and conditions hereinafter specified.”

Section 12(4), 1951 PA 51, *supra*, governs the use of such money on urban road systems. Section 12(5)(a)(b)(c) of the act, *supra*, governs the expenditures of the motor vehicle highway fund on the county primary road systems. Section 12(6)(a)(b) of the act, *supra*, covers the use of the fund for the county local road systems. Section 12(13) of the act, *supra*, describes the authority county road commissions have to enter into agreements with other county road commissions and other units of government, including the State Highway Commission, for the construction of county roads and state trunkline highways with motor vehicle highway funds.

In *Moreton v Secretary of State*, 240 Mich 584, 216 NW 450 (1927), the Supreme Court said that construction of public roads is a matter of state-wide concern. In *Michigan Good Roads Federation v State Board of Canvassers*, *supra*, the Supreme Court made reference to the *Moreton* case, *supra*, stating that road building in Michigan is actually a state function even though performed in part by boards of county road commissioners. See, also, *Dearborn v Michigan Turnpike Authority*, 344 Mich 37, 73 NW2d 544 (1955).

Accordingly, when boards of county road commissioners use their allocated portions of the motor vehicle highway fund for the construction and reconstruction of county roads and state trunkline highways under 1951 PA 51, *supra*, they are exercising a state function with state funds and accomplishing a state purpose, and must, therefore, comply with the requirements of 1965 PA 166, *supra*.

FRANK J. KELLEY,
Attorney General.