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Attorney General Dave Yost  
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**RE: Request for Opinion**

Dear Attorney General DeWine:

On behalf of this office and the Trumbull County Board of Commissioners, I am respectfully requesting your opinion on the following matters. As you are aware, the Ohio Revised Code contains a number of economic development incentives that can take the form of tax abatements and other assistance. In Trumbull County, two popular statutory methods of economic development have been community reinvestment areas pursuant to R.C. 3735.65, et seq. and enterprise zones pursuant to R.C. 5709.61, et seq.

For purposes of a tax incentive under in a community reinvestment area, “[t]he owner of real property located in a community reinvestment area and eligible for exemption from taxation under a resolution adopted pursuant to section 3735.66 of the Revised Code may file an application for an exemption from real property taxation” subject to certain conditions. R.C. 3735.67(A). Moreover, “[i]f construction or remodeling of commercial or industrial property is to be exempted from taxation,” the parties, “prior to the commencement of construction or remodeling, shall enter into a written agreement, binding on both parties for a period of time that does not end prior to the end of the period of the exemption, that includes all of the information and statements prescribed by this section.” R.C. 3735.671(A). In addition to the terms mandated by statute, “[a]greements may include terms not prescribed by this section, but such terms shall in no way derogate from the information and statements prescribed by this section.” Id.

Likewise, applicants can apply for tax incentives available in an enterprise zone pursuant to authority granted by R.C. 5709.63. In an enterprise zone, a written agreement is also required, and must contain the terms set forth in R.C. 5709.631(A). In addition, “[a]greements may include terms not prescribed by this section, but such terms shall in no way derogate from the information and statements prescribed by this section.” R.C. 5709.631.

In 2014, the Trumbull County Board of Commissioners requested legal advice as to whether additional conditions could be placed on the granting of tax exemptions, specifically asking whether the Board of Commissioners could require the applicant to pay prevailing wages for the workers on the project. In the attached letter, my office explained that while R.C. 3735.671(A) permitted additional terms not prescribed by statute, we were unable to locate any legal authority directly on point relative to prevailing wage requirements. At that time, we offered to seek an opinion of the Ohio Attorney General, but were not asked to do so.

Recently, this issue was revived by the Board, and my office has once again researched this matter relative to enterprise zones and community reinvestment areas. In doing so, we confirmed that the statutes cited above still permit additional terms to be added to both community reinvestment area and enterprise zone contracts. However, we still have not been able to locate any specific legal authority that addresses a term requiring the payment of prevailing wage. We recognize that in a somewhat different context, the Ohio Supreme Court has addressed the payment of prevailing wage as it related to Chapter 140 of the Revised Code. Specifically, the Court explained:

“R.C. Chapter 140 financings provide a mechanism whereby public and nonprofit hospital agencies can construct and upgrade their facilities with tax-exempt obligations, thus lowering their construction costs. The purpose of issuing R.C. Chapter 140 obligations is to ‘ \* \* \* better \* \* \* [provide] for the health and welfare of the people of the state by enhancing the availability, efficiency, and economy of hospital facilities and the services rendered thereby \* \* \*.’ R.C. 140.02. Allowing public and nonprofit hospital agencies to lower their construction costs through the use of tax-exempt financings and then insisting that they pay prevailing wages on their construction projects works at cross-purposes. Therefore, we hold that construction projects financed with R.C. Chapter 140 bonds are not ‘public improvements’ as defined in R.C. 4115.03(C), and are therefore not subject to the prevailing wage law.” *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St.3d 366, 371, 575 N.E.2d 134, 138 (1991).

While possibly helpful, this case may not be instructive to Trumbull County’s particular question, in part because it was a four to three decision. However, it does highlight the need for an opinion of the Attorney General. As such, the Board of Commissioners has now asked me to obtain an opinion on the following questions:

1. Does a Board of Commissioners have authority to require that an applicant for an enterprise zone tax incentive under R.C. 5709.61, et seq. compensate labor used in the site preparation and construction of the project at prevailing wage rates?
2. Does a Board of Commissioners have authority to require that an applicant for an enterprise zone tax incentive under R.C. 5709.61, et seq. use a specified percentage of local workers in the site preparation and construction of the project described in the enterprise zone agreement?

3. Does a Board of Commissioners have authority to require that an applicant for a community reinvestment tax incentive under 3735.65, et seq. compensate labor used in the site preparation and construction of the project at prevailing wage rates?
4. Does a Board of Commissioners have authority to require that an applicant for a community reinvestment tax incentive under 3735.65, et seq. use a specified percentage of local workers in the site preparation and construction of the project described in the enterprise zone agreement?
5. Does a Board of Commissioners have authority to require the payment of prevailing wage rates and/or require the use of local workers for statutory economic incentives other than community reinvestment areas and enterprise zones?

We hope that the legal authority described above, along with our attached letter, will provide you with the relevant background and give some insight into the research that has already been conducted. However, if you should have any questions regarding this matter, please do not hesitate to contact me or Chief Counsel of the Civil Division, William Danso, who may be able to provide additional information. As always, thank you for your cooperation in this matter.

Very Truly Yours,



Dennis Watkins  
Trumbull County Prosecuting Attorney