1964 O. A. G.

OFFICIAL OPINION NO. 53

September 11, 1964

Hon. Matthew E. Welsh
Governor of Indiana
206 State House
Indianapolis 4, Indiana

Dear Governor Welsh:

Your letter requesting my Official Opinion on certain questions reads as follows:

"Questions have recently arisen concerning the application of those statutes requiring the establishment of prevailing wage rates and the requirement of advertising for bids on work in excess of $2,000.

"Enclosed is a letter from the Indiana State Building and Construction Trades Council giving additional background on the problem.

"I would greatly appreciate your opinion on the applicability of these statutory provisions to the universities when awarding contracts involving the expenditure of funds derived from taxation."

The Acts of 1935, Ch. 319, Sec. 2, as found in Burns' (1951 Repl.), Section 53-302 pertains to contracts let by the state or a municipal corporation and reads as follows:

"The state or any municipal corporation thereof, letting any such contracts, shall require any contractor or subcontractor performing such public work to file a schedule of the wages to be paid to such laborers, workmen or mechanics thereon, with the state or with such municipal corporation; such schedule shall be filed before any work is performed on such contract or subcontract: Provided, Such scale shall not be less than the scale determined as provided in section one hereof: Provided further, That nothing in this act provided shall prevent such contractor or subcontractor from paying a higher rate of wages than set out in the schedule of wages filed by him."
Section one referred to in Burns' 53-302, supra, provides the method for setting a prevailing wage scale by "the state, or any political subdivision thereof or by a municipal corporation, for the construction of any public work."

The Acts of 1935, Ch. 319, Sec. 4, as found in Burns' (1951 Repl.), Section 53-304, defines certain terms used therein and includes a definition of the state of Indiana which reads as follows:

"As used in this act:

"The term 'state of Indiana' shall be construed to include any officer, board, commission or other agency authorized by law to award contracts for performance of public work on behalf of the state, excepting as herein otherwise provided."

It further defines "public work" as follows:

"The term 'public work' shall be construed to include any public building, highway, street, alley, bridge, sewer, drain, improvement or any other work of any nature or character whatsoever which is paid for out of public funds, excepting as herein otherwise provided."

Unquestionably funds of the universities which have been made available through taxes paid into the State Treasurer would be public funds.

Further, under the provision of the Acts of 1947, Ch. 199, Sec. 1, as found in Burns' (1948 Repl.), Section 28-5735, state universities may let contracts on behalf of the state. Said section reads, in part, as follows:

"A state supported institution of higher learning may contract for professional or expert services and may contract with agents for the construction, alteration or repair of any building or facility of such institution."

Therefore, the provisions of the prevailing wage rate statutes are applicable to state supported universities when
awarding contracts which require the expenditure of funds derived from taxes.

The Acts of 1935, Ch. 319, Sec. 1, as found in Burns' (1951 Repl.), Section 53-301, contains an exception which is pertinent to your question and such exception reads as follows:

"* * * Provided further, That the provisions of this act shall not apply to any such public projects in this state the letting of which would otherwise be subjected to the provisions hereof, and which are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making such grant shall consent in writing that the provisions of this act shall be applicable to such project: Provided further, That the provisions of this act shall not apply to any such project the letting of which is being advertised for at the time this act takes effect."

In the event federal funds are involved, the provisions of the Davis-Bacon Act as passed by the Congress and implemented by rules and regulations adopted by the Comptroller General might be applicable, but such a determination is outside the confines of this opinion.

The Acts of 1947, Ch. 306, Sec. 1, as amended and found in Burns' (1964 Supp.), Section 53-108, relates to advertising for bids for public work and reads, in part, as follows:

“When any public building or any other public work or improvement of any character whatsoever is to be constructed, erected, altered or repaired at the expense of the state or at the expense of any county, city, town, township, school corporation, public utility owned or operated by any city of the second, third, fourth or fifth class or by any town, or other political subdivision, or commission created by law, excepting the state highway department of Indiana, and when the costs of such work or improvement will be two thousand dollars [$2,000] or more, it shall be the duty of the board, commission, trustee, officer or agent acting on behalf of the state, county, city, town, town-
ship, school corporation, public utility owned or operated by any city of the second, third, fourth or fifth class or by any town, or other political subdivision or commission created by law, excepting the state highway department, to adopt plans and specifications and award a contract for such public work or improvement to the lowest and best bidder who submits a bid for the performance thereof * * *”

For the same reasons as given in regard to the applicability of the statutes concerning a prevailing wage scale to state supported colleges and universities, it is my opinion that this section is also applicable to such colleges and universities.

In summary hereof:

1. It is my opinion that state supported colleges and universities must comply with the provisions regarding the establishment of minimum wage rates before awarding contracts which require the expenditure of funds derived from taxation, except when such contract involves the use of federal funds.

2. Further, it is my opinion that state supported colleges and universities must advertise for bids, when expending funds derived from taxation, when the amount of the proposed improvement contract exceeds $2,000.00.

OFFICIAL OPINION NO. 54

September 15, 1964

Mr. Roger R. Shipley, Controller
State Highway Commission
1104 State Office Building
Indianapolis, Indiana

Dear Mr. Shipley:

You have requested an Official Opinion relative to the State Highway Commission withholding gross income tax on payments due out-of-state contractors where these out-of-state contractors have been licensed by the Secretary of State to