

1978-1979 Ky. Op. Atty. Gen. 2-443, Ky. OAG
79-427, 1979 WL 33433 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 79-427

August 17, 1979

Mr. Cecil S. Mallory, Jr.
Todd County Judge/Executive
P.O. Eox 355
Elkton, Kentucky 42220

Dear Judge Mallory:

The Todd Fiscal Court is attempting to build a county building for use by the County Health Department.

The State Bureau of Health has awarded a \$50,000 grant for such construction. The grant contains the restriction striction that the local prevailing wage for labor be paid.

You say that if the local prevailing wage is paid, there will be a shortage of \$50,000 of available money, as relates to the total construction cost.

Your question is whether the county can use forced labor (county employees) and thus avoid the prevailing wage restriction.

[KRS 337.510](#) and [337.520](#) deal with the requirement that public officials authorized to contract for or construct public works must, before letting out bids, seek a determination of prevailing wages.

In [Cassady v. Board of Alderman of the City of Bowling Green, Ky., 277 S.W.2d 1 \(1955\)](#), the case involved the right of the City of Bowling Green to construct two sub-fire stations, etc., without determining prevailing wages a advertising for bids.

Ordinances were adopted by the city providing that the work be done by the Board of Public Works under the supervision of the city engineer. The procuring of materials and supplies would be brought under the bidding statute where applicable. The city would go into the open labor market and employ skilled craftsmen through the Board of Public Works, pursuant to the ordinances. The lower court upheld the city's authority to handle the construction project in that manner; and it held that KRS Chapter 337 (as to the prevailing wage) was not violated.

The appellate court, in upholding the lower court, held that the prevailing wage law was not applicable. It endorsed the reasoning of the lower court in holding it not applicable:

“This statute [KRS 337.510](#) must be construed in accordance with its spirit and purpose which is salutary and in the public works enhancing their profits or deminishing their losses by exploiting the labor which they employ. And, therefore, the requirement that the public authority shall in such a case establish the prevailing rate of wages and require the contractor to pay such rates.”

It is our opinion that the fiscal court may use county government employees to construct the county building without advertising for bids for such labor and without the application of the prevailing wage law. We assume the fiscal court would use county government employees as the exclusive labor force. However, any necessary materials or supplies for the project would be subject, if applicable in the monetary amount, to [KRS 424.260](#).

Sincerely,
Robert F. Stephens
Attorney General

By: Charles W. Runyan
Assistant Deputy Attorney General

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