

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37243-0497

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Opinion No. 03-146

Cities' authority to add benefits to the State prevailing wage rates in connection with contracts entered into by that city

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**QUESTIONS**

1. Does a city have the authority under State law to establish a prevailing wage rate that adds certain specified benefits to the State prevailing wage rates in connection with contracts entered into by that city?
2. If they do not, who has standing to challenge the ordinance?

**OPINIONS**

1. Cities are entitled to exercise those powers delegated to them by the legislature in their charters or under statutes. Therefore, to the extent a city has been granted the power, a city will have the authority to establish a prevailing wage rate that adds benefits to, or exceeds the State prevailing wage rate as there is no State law that would preclude them from doing so.
2. Since question 1 was answered in the affirmative, question 2 is moot.

**ANALYSIS**

The "Prevailing Wage Act of 1975" is codified at Tenn. Code Ann. §§ 12-4-401 et seq. The stated purpose of the Act is twofold. First, it is to determine the prevailing wage rate by defined standards and to require that workers on all "state construction projects" be paid at least the prevailing wage rate. Second, its purpose is also to require contractors, who enter into "state contracts" to perform work on "state construction projects," to pay his or her workmen at least the prevailing wage rate. T.C.A. § 12-4-403.

A "state contract" is defined to mean "any contractual agreement, written or oral, entered into by any person, firm or corporation with the state of Tennessee for the performance of work on a state construction project." T.C.A. § 12-4-402(d). A "state construction project" is defined to include:

. . . any construction project in an amount in excess of fifty thousand dollars (\$50,000) for the purpose of erection, remodeling, alteration, repairing, demolition, or making any additions to any building or buildings, or any other type of building and construction work wherein any state funds may be appropriated or expended for such said building or construction work . . .

T.C.A. § 12-4-402(c).

Tennessee municipalities are entitled to exercise “those express or necessarily implied powers delegated to them by the legislature in their charters or under statutes.” *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988). The mere fact that the state already has a statute on a particular subject does not necessarily prohibit a municipality from enacting an ordinance that exacts additional requirements. *See Southern Ry. v. City of Knoxville*, 442 S.W.2d 619 (1968). As long as there is no conflict between the two, both will stand. *Id.*

The fact that an “ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescriptions.” *Capitol News Company, Inc. v. Metro Government of Nashville, Davidson County*, 562 S.W.2d 430, 434 (Tenn. 1978). There is nothing in the State Prevailing Wage Act to indicate that the General Assembly intended to prohibit municipal corporations from adopting local ordinances on the same subject. Moreover, an ordinance that adds benefits to the Prevailing Wage Act would not be at cross purposes with the Act. Thus, there would be no conflict between the Act and a city’s ordinance placing an additional burden on contractors who enter into construction contracts with that city.

Assuming the legislature has granted a city the power to pass its own ordinances, there is no State law that would act to prohibit that city from enacting its own prevailing wage ordinance with respect to its own construction projects. Moreover, there is no State law that would act to prohibit the city from requiring contractors, who enter into construction contracts with that city, to provide its employees with benefits that are in addition to the minimum prevailing wage. This is true even if State funds are appropriated or expended for the construction work.

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