

ROADS AND HIGHWAYS: State Highway Commission may include minimum wage scale in contracts for construction of highway projects if necessary to get Government funds.

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Hon. Louis V. Stigall,
Chief Counsel,
Missouri State Highway Department,
Jefferson City, Missouri.

Dear Sir:

This acknowledges receipt of your request which is as follows:

"May I request an opinion from your office on the following question:

"Is it legal for the State Highway Department to incorporate in its contracts with contractors for the construction of highways under regular federal aid a provision for a minimum wage scale for labor as predetermined by the State Highway Department?"

"The situation is this: At the May Term, 1935, the Supreme Court held that a contract let under a law providing that the contract must be let to 'the lowest responsible bidder' is void if such contract incorporates a provision providing for a minimum wage scale. The court decided this upon the theory that such a provision prevents the contract from being let to the 'lowest responsible bidder.' This case not having been in the books, a typewritten copy is herewith attached for your use.

"The statutes of Missouri, however, provide that the State Highway Department

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shall 'comply with the provisions of any act of Congress providing for the disposition and expenditure of funds of the United States appropriated by Congress for highway construction, and to comply with any of the rules or conditions made by the Bureau of Public Roads of the Department of Agriculture . . . in order to secure to the State of Missouri funds allotted to this state by the United States Government for highway construction.' Section 8106 R. S. Mo. 1929.

"Under the old federal aid statutes of 1916 to 1921 and amendments thereto, there was no provision for minimum wage schedules. There was no minimum wage schedule in the rules and regulations of the Federal Bureau of Roads so providing under those acts until the rules and regulations issued February 27, 1935, called to our attention by Mr. Thomas H. McDonald, Chief of Bureau of Roads, in a letter of July 23. Both his letter and copy of these regulations are herewith appended for your use. The federal aid act approved July 11, 1916, is also herewith appended and attached for your use with special reference to Section 6 on page 2 thereof. This act has not been repealed and is still in force.

"I append these documents in order that you may determine whether or not compliance with the minimum wage scale requirements appears necessary in order for us to secure federal aid funds as meant by our statute directing compliance with such rules and regulations.

"In this connection, also, I desire to refer you to the opinion of our Supreme Court in Logan vs. Matthews, decided August 5, 1932, 52 S. W. (2d) 989, which seems to show that our Supreme Court, which on May of this

year decided that a federal wage schedule is void, yet would hold such a contract made by the Highway Department legal if it were necessary to insert it 'in order to secure to the State of Missouri funds allotted to this State by the United States Government for highway construction.'

"It is true in regular federal aid a part of the funds are state funds and part of them are federal aid funds involved in one and the same contract.

"I would have asked you sooner for this opinion but I have only this morning received the letter I considered necessary from the Chief of the Bureau. His letter is in answer to mine asking him if compliance is absolutely essential to our receiving the funds.

"Would it be asking too much of you to let us know as promptly as possible for the reason that certain contracts, if let, must be let at once.

"Since the enclosures are public documents of which we only have the original copies, we would like for you to return them for filing in our Department. They will be available to you at any time the same may be necessary."

You also enclose a pamphlet of the United States Department of Agriculture containing the Federal Legislation and Regulations relating to Highway Construction, Section 6 on page 2 thereof being as follows:

"That any State desiring to avail itself of the benefits of this act shall, by its State highway department, submit to the Secretary of Agriculture project statements setting forth proposed construction of

any rural post road or roads therein. If the Secretary of Agriculture approve a project, the State highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: Provided, however, That the Secretary of Agriculture shall approve only such projects as may be substantial in character and the expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the Secretary of Agriculture approve the plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this act on account of such project, which shall not exceed fifty per centum of the total estimated cost thereof. No payment of any money apportioned under this act shall be made on any project until such statement of the project, and the plans, specifications, and estimates therefor, shall have been submitted to and approved by the Secretary of Agriculture."

Likewise is enclosed a pamphlet of Rules and Regulations with reference to Carrying out the Federal Highway Act, and on page 8 thereof and as part of Regulation 10, entitled "Labor and Employment", is the following provision:

"Section 3. (a) To prevent the exploitation of labor all contracts for the construction of highways under this Act shall prescribe the minimum rates of wages, as predetermined by the State highway department, which

contractors shall pay to the different classes of labor, and such minimum rates shall be stated in the advertisement for bids and in proposals or bids which may be submitted. The wage rates so determined shall be a minimum rate for unskilled labor, a minimum rate for labor, intermediate grade, and a minimum rate for skilled labor. The classification of labor employed on highway work into the three classes mentioned shall be in accordance with instructions issued by the Chief of the Bureau of Public Roads."

Likewise is enclosed a letter dated July 23, 1935, from Mr. Thomas H. MacDonald, Chief of Bureau of Public Roads, Washington, D. C., to Mr. T. H. Cutler, stating that these rules were approved February 27, 1935, and that they supersede all prior rules, etc; also copy of a letter dated July 19, 1935, from the Chief Engineer of your Department to Mr. Thomas H. MacDonald, Chief of Bureau of Public Roads, Washington, D. C.

An excerpt from an opinion rendered by this office of date January 17, 1934, to Hon. Edward H. Miller, is as follows:

"It is and will be the policy of this office not to express an opinion as to any particular form of policy or contract of insurance with reference to whether the same is a contract for mutual insurance or not. The foregoing should make it clear as to what our idea of mutual insurance is and those interested will determine for themselves the legal effect of the policy or insurance contract they may or may not accept."

It is not the policy of this office to make a finding of fact, and we assume for the purpose of this opinion that the Federal Government has made a regulation which requires the existence of a minimum wage provision in contracts for highway projects let in Missouri and in the construction of which federal money is used.

Your inquiry is, do the laws of Missouri permit the inclusion of a minimum wage provision in contracts for highway projects?

Section 8104, R. S. Mo. 1929, among other things, provides that the State Highway Commission shall

"(8) Prepare plans, specifications and estimates for all state highways.

"(9) Let all contracts for the construction or improvement of state highways."

Section 8106 provides in part as follows:

"The commission is hereby directed to comply with the provisions of any act of congress providing for the distribution and expenditure of funds of the United States appropriated by congress for highway construction, and to comply with any of the rules or conditions made by the bureau of public roads of the department of agriculture, or other branch of the United States government, acting under the provisions of federal law in order to secure to the state of Missouri funds allotted to this state by the United States government for highway construction."

Section 8116 provides in part as follows:

"All contracts for the construction of said work shall be let to the lowest responsible bidder or bidders," etc.

It further provides:

"That in all cases where the project advertised shall be for the construc-

tion of more than five miles of road, such advertisement shall provide for bids on sections of said road not to exceed five miles, as well as on the project as a whole, and such contract shall then be let so as to provide for the most economical construction of said project."

The Supreme Court of this state in an opinion not yet officially published, being the case of Hillig v. City of St. Louis, et al., No. 33,787, decided that a city ordinance of the City of St. Louis which that city had enacted containing a minimum wage scale was invalid as contrary to the provisions of the charter of the City of St. Louis, which contains a provision as to the letting of public contracts similar to the provision in Section 8116, supra, that the contracts should be let to the lowest responsible bidder. A careful analysis of that case leads us to conclude that it is not authority for holding that the State may not include a minimum wage provision in its road contracts.

Section 20 of Article 9 of the Constitution of Missouri provides that the city charter of the City of St. Louis when adopted shall become the "organic law of the city". Pursuant to the same, the present charter of St. Louis was adopted in 1914 and contains the above noted provision that all public work shall be let by contract to the lowest responsible bidder.

The holding of the Supreme Court in the Hillig case was that the city charter, insofar as the board of aldermen was concerned, was in the nature of a limitation of their power analogous to the constitutional restriction with reference to the legislative powers of the state. In that case it is stated:

"In general the charter of a city bears the same relation to the ordinances that the constitution of a state bears to its statutes."

If our Constitution contained a provision that all public work should be let by contract to the lowest responsible bidder, or a provision of similar import, then the Hillig case would be authority against the Highway Commission letting public work projects by contracts that contain the minimum wage

provision. However, we are not aware of any constitutional inhibition.

It has been decided in this state that an act which embraces all persons who are or who may come into like situations and circumstances is not a special act. State ex rel. Martin v. Wofford, 121 Mo. 61; Elting v. Hickman, 172 Mo. 237; State ex rel. Applegate v. Taylor, 224 Mo. 393.

In the case of Elting v. Hickman, supra, the matter there considered was a law which provided for the organization of special road districts, in which is located a city of the third or fourth class, except certain cities of the third class, and providing it should take effect only in such places as the county court shall, by record, declare the same to be the law in such prescribed territory where adopted by the legal voters thereof. It was attacked as unconstitutional and as special legislation. The court said:

"In Lynch v. Murphy, 119 Mo. l. c. 172, it was said: 'It is also insisted by counsel for plaintiffs that said acts are in conflict with section 53 of article 4 of the Constitution; that it is a special law; that it regulates the affairs of townships; creates new offices, refunds moneys legally paid into the treasury and grants special privileges. In support of this contention, he relies upon State ex rel. v. Herman (75 Mo. 346); but in that case it was expressly said "that a statute which relates to persons or things, as a class, is a general law, while a statute which relates to particular persons or things of a class, is special." The statute now under consideration refers to all of the road districts in all the counties in the State where there are dramshops, and to all townships that are indebted and that have compromised, or that may hereafter compromise their indebtedness. It does not refer or have reference to any particular county, road district or township and is not local or special in its application.'

"To the same effect is the case of State ex rel. v. County Court, 128 Mo. 427.

"It is well settled that a law which includes all persons who are in or who may come into like situations and circumstances is not special legislation. (State ex rel. v. Wofford, 121 Mo. 61; State ex rel. v. Yancy, 123 Mo. 391; Spaulding v. Brady, 128 Mo. 653; State ex rel. v. Higgins, 125 Mo. 364.)

"A further contention is that the act is violative of section 3, article 10, of the Constitution, in that it appropriates public revenue to a private purpose.

"We are unable to see the force of this contention, for certainly the appropriation of moneys to the construction, repairment and maintenance of public roads which are for the use and benefit of the public, can in no sense be considered as an appropriation of moneys for a private purpose.

* * * *

"A final contention upon this theory of the case is, that the act violates section 10, article 10, of the Constitution, in that it attempts to appropriate money levied and collected by city authorities to uses and purposes outside of such cities. Cities are practically as much interested in public roads beyond their corporate limits which lead into and enter them as they are in their own streets, and have heretofore been taxed to keep up such roads. (Secs. 4575 and 7663, par. 2, R. S. 1889.) And they had the power to appropriate a sum of money not to exceed ten per cent of the annual general revenue for that purpose. (Sec. 7922,

R. S. 1889.) It must follow that if the Legislature had the power to permit cities and towns to improve roads beyond their limits, it possesses the power to direct it to be done. In State ex rel. v. Owsley, 122 Mo. 1. c. 78, it was said: "The purposes for which such local taxes have always been imposed are not alone the support of the local government, but the support of many other public burdens, among which may be mentioned maintaining public schools, making and keeping in repair the public roads and bridges."

See also State ex rel. v. Burton, 266 Mo. 711, 182 S. W. 746, that the section prohibiting granting of public money is not violated.

Likewise, Sec. 8106, supra, applies to all contracts of a given class, to-wit, those that are in part paid for from the federal funds.

It does not appear that there is any constitutional limitation against the enactment by the Missouri Legislature of Sections 8106 and 8116, supra.

The Hillig case is ruled on an essentially different state of facts from those under consideration. The difference is that the ordinance there providing for the minimum wage schedule was counter to the organic law of the city, i. e., the city charter that was adopted by the people of St. Louis in 1914, as Section 20 of Article 9 of the Missouri Constitution authorized them to do, and in that charter they prohibited the letting of public contracts except to the low bidder, and the charter could not be changed by a city ordinance, while in the present case there is no organic or constitutional bar to the state legislature enacting laws relative to the letting of such contracts. It then becomes a question of statutory construction for us to determine the meaning of the statutes as written by the Legislature. It is a cardinal rule of statutory construction that statutes must be construed to give effect to the intent of the Legislature and if possible each section of an act must be construed to have effect.

Guided by that beacon, our view is that Section 8116, R. S. Mo. 1929, in the letting of all contracts for highway

projects (where the provisions of Section 8106 are not applicable and where another course is not required in order that Missouri avail itself of the federal aid) must be followed and the contracts for highway projects should be let to the lowest responsible bidder as set forth in said Section 8116, but Section 8106 was enacted to meet such unforeseen contingencies as might after its enactment arise with respect to federal requirements and authorizes the letting of contracts for the highway projects in such a way, within constitutional limitations, as may be necessary in order to comply with the provisions of the Acts of Congress and the rules and regulations as set forth in said Section 8106.

The reasonable view is that it was the intent of the Legislature in enacting Section 8106 that Missouri should never be denied the benefits of the federal aid road money by reason of some restriction in the written law which would bar or prevent her from qualifying therefor; that the Legislature had this intent in enacting Section 8106. To so hold gives meaning and life to said section and is consistent with the operative life and controlling force of Section 8116 except as to the federal aid money. To hold otherwise, we think, would lead necessarily to the conclusion that said Section 8116 should be given unwarranted force and effect and that Section 8106 should be in effect nullified. Evidently the Legislature did not intend the latter.

CONCLUSION

We are of the opinion that the Missouri State Highway Commission has the authority

"to comply with the provisions of any act of congress providing for the distribution and expenditure of funds of the United States appropriated by congress for highway construction, and to comply with any of the rules or conditions made by the bureau of public roads of the department of agriculture, or other branch of the United States government, acting

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under the provisions of federal law in order to secure to the state of Missouri funds allotted to this state by the United States government for highway construction,"

and if the federal authorities have made a requirement that your Commission shall insert a minimum wage scale provision in your contracts for construction of highway projects in order to receive federal aid thereon, then your Commission has the legal right to so insert said minimum wage scale in such contracts, but not in any others.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

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