

PREVAILING WAGES:  
CONSTRUCTION WORK:  
MAINTENANCE WORK:  
REPAINTING:

The repainting of bridges on State highways is "construction" within the meaning of, and therefore included in the operation of, the prevailing wage law, Sections 290.210 to 290.310, RSMo, as amended.

OPINION NO. 388

October 25, 1966

Honorable James J. Butler, Chairman  
Industrial Commission of Missouri  
State Office Building  
Broadway and High Streets  
P. O. Box 599  
Jefferson City, Missouri



Dear Mr. Butler:

This is in answer to your request for an opinion of this office which you have stated in part as follows:

"It is respectfully requested that you examine the statutes . . . and in particular, Section 290.210 (1) and (5), and Section 290.230, 1, and favor us with your opinion as to whether or not the repainting of bridge structures constitutes 'maintenance work' or 'construction' as contemplated by the statutes indicated.

"As you are aware, the laws pertaining to the payment of wages on public works exclude workmen employed by or on behalf of any public body engaged in maintenance work as defined by the statute. The question has arisen in connection with the repainting of bridge structures on highway projects where the Missouri State Highway Department has let contracts for such repainting and consider them as maintenance. You will note that Section 290.210 (1) includes painting within the definition of 'Construction'. There would seem to be no question that the original painting on such projects would constitute 'construction' as defined. However, where repainting is involved it would appear that some confusion has arisen as to whether or not this constitutes construction or maintenance as contemplated by the act.

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"We believe that the definition of 'Construction' should control and that all painting of such projects constitutes the construction of public works and that accordingly, the contractor engaged in such painting should be required to pay not less than the prevailing hourly rate of wages to the workmen so employed."

Section 290.210, RSMo Cum. Supp. 1965, states in pertinent part:

"(1) 'Construction' includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair;

"(5) 'Maintenance work' means the repair, but not the replacement, of existing facilities when the size, type or extent of the existing facilities is not thereby changed or increased;"

The legislature may define certain words used in a statute and the Court is bound by such definition without enlarging or diminishing the meaning provided by the statute, although otherwise the language would have been construed to mean a thing different from that contemplated by such statutory definition. 82 C.J.S., Statutes, Section 315, Pages 536 to 538.

In construing statutes, there is a presumption that every word, sentence, or provision was intended for some useful purpose, and has some force and effect. Conversely, it will not be presumed that the legislature inserted idle or meaningless verbiage, or superfluous language, or intended any part or provision to be meaningless, redundant, or useless. 82 C.J.S., Statutes, Section 316, Pages 551-552; State ex rel. Kelsey v. Smith, Mo., 75 S.W.2d 832; Dodd v. Independence Stove & Furnace Co., Mo., 51 S.W.2d 114; State ex rel. St. Louis Die Casting Corp. v. Morris, Mo., 219 S.W.2d 359.

In accordance with the rule or maxim of *noscitur a sociis*, doubtful words and phrases used in statutes are construed in connection with the words and phrases with which they are associated. 82 C.J.S., Statutes, Section 331, Page 654. Under this rule, the meaning of a word may be enlarged or restrained

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by reference to the whole clause in which it is used. O'Malley v. Continental Life Ins. Co., Mo., 75 S.W.2d 837.

In 82 C.J.S., Statutes, Section 332, Page 658, it is said:

"Following the grammatical rule, where general words occur at the end of a sentence they refer to and qualify the whole; but if they are in the middle of the sentence and sensibly apply to a particular portion of it, they are not to be extended to what follows them."

This statement is merely the converse of the rule of ejusdem generis, which states that where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated, State v. Lawson, Mo., 181 S.W.2d 508, 512.

Applying the above rules of statutory construction to the quoted part of Section 290.210, supra, it is apparent that the legislature intended to define and enlarge the meaning of the word "construction" so as to include more than is comprised in the ordinary meaning of the term. Further, by expressly including "painting" as well as "major repair" in the meaning of "construction", the legislature intended the prevailing wage law to apply to painting, in circumstances other than and in addition to occasions wherein painting constitutes a part of major repair or construction in the usual sense. Otherwise, the words "painting and decoration" would be superfluous because already included either within the term construction (as ordinarily understood) or the term "major repair."

The prevailing wage law excepts "maintenance work" from the operation of the act. By subsection (5), supra, "maintenance work" is defined as repair of existing facilities when the size, type or extent of the existing facility is not thereby changed or increased. The argument that repainting could be considered maintenance work or repair other than major, so as to fall within the exception thereof from the application of the act, is overridden by the above consideration that the definition of "construction" as including painting prevails over what might otherwise be considered repairs or maintenance.

It is noted that the Davis-Bacon Act, Public Law 403, 74th

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Congress, which is the Federal prevailing wage law, has been construed by the Solicitor of Labor to apply to repainting and steam and sand blast cleaning operations, "where these operations were authorized for the same purpose as painting and decorating," considering that "the classifications of employees and equipment used were those traditionally employed in the construction industry and the work was not of a regular nature such as could be considered as maintenance work." Opinion Letter of Solicitor of Labor No. D.B.-8, July 17, 1961. The same considerations meet with the spirit of the Missouri legislation.

In the opinion of the Attorney General of Missouri, dated April 30, 1958, addressed to Honorable Stephen N. Limbaugh, (Subsequently withdrawn on other grounds) it was ruled that "painting and repainting of steel bridges . . . comes within the definition of 'construction' since that definition 'includes . . . painting and decorating . . .'" (referring to Section 290.210, RSMo 1957, Cum. Supp.). The present statute is the same in the instant respect, and we adhere to the stated interpretation.

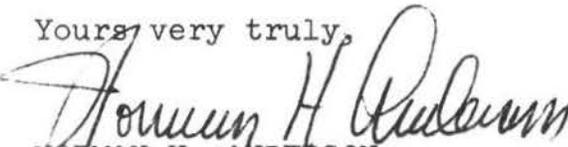
Note that the prevailing wage law applies only to painting when done by a contractor and not when done by a public body's own employees. City of Joplin v. Industrial Commission of Mo., Mo., 329 S.W.2d 687.

#### CONCLUSION

It is the opinion of the Attorney General that the repainting of bridges on State highways is "construction" within the meaning of, and therefore included in the operation of, the prevailing wage law, Sections 290.210 to 290.310, RSMo, as amended.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald L. Randolph.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General