

ROADS AND BRIDGES:  
STATE HIGHWAY DEPARTMENT:  
PREVAILING WAGE LAW:

Contract for seal coating state highways with asphalt not subject to Prevailing Wage Law. Contract for application of layer of asphalt and aggregate three-eighths of inch thick subject to Prevailing Wage Law.

OPINION NO. 56 (1968)  
305 (1967)

April 18, 1968

FILED  
56

Honorable Thomas A. Walsh  
State Representative - District 52  
Missouri House of Representatives  
Capitol Building  
Jefferson City, Missouri

Dear Representative Walsh:

This is in answer to your request for an official opinion from this office asking whether the Prevailing Wage Law of Missouri applies to contracts let by the State Highway Department for "seal coating" asphalt highways and to contracts for the application to existing highways of a layer of asphalt into which an aggregate is rolled.

Section 290.210 RSMo Supp., 1967, defines "construction" and "maintenance work" under the Prevailing Wage Law of this State as follows:

"(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;"

"Construction" comes within the purview of the Prevailing Wage Law but "maintenance work" does not come within the purview of such Law.

It is our understanding that "seal coating" asphalt highways is accomplished by spraying liquid asphalt from a tank mounted on a carrier, the purpose being to fill in small cracks in the surface of

asphalt, which cracks if not filled in would cause the asphalt to deteriorate. In some instances fine material is placed on the sprayed surface to keep motor vehicle tires from picking up the asphalt during the short "drying" or "soaking" period.

We believe it to be clear that the mere application of liquid asphalt on an asphalt highway to fill small cracks which have developed in the surface of such road does not constitute construction, reconstruction, improvement, enlargement, alteration, painting, and decorating or major repair. We believe this would also be true even though some fine material is placed on top of the asphalt to prevent its being picked up by automobile tires during the soaking and drying process. Therefore a contract for such work is not a contract for "construction" within the meaning of the Prevailing Wage Law and the contract is not subject to the provisions of such Law.

It is our understanding that contracts for the application of a layer of asphalt and aggregate to an existing highway require the application of approximately three gallons of asphalt per square yard or about 3,000 gallons per mile and the application of 250 to 300 tons of aggregate per mile which is rolled into the asphalt layer producing a new uniform highway surface, the thickness of the layer of such asphalt and aggregate being about three-eighths of an inch.

It is our view that the application of a layer of asphalt and the rolling into such asphalt of aggregate so as to produce a new layer on an existing highway, such layer being about three-eighths of an inch in thickness and which produces a new highway surface constitutes "reconstruction" and "improvement" of such highway as such terms are used in the definition of "construction" found in Section 209.210 RSMo., Supp., 1967, and that such contract is subject to the Prevailing Wage Law of Missouri.

#### CONCLUSION

It is the opinion of this office that when a contract is let by the State Highway Department whereby liquid asphalt is sprayed from a tank for the purpose of sealing small cracks in the surface of an asphalt highway such work is not "construction" within the meaning of the Prevailing Wage Law of Missouri and the provisions of such Law are not applicable to such contract.

It is the further opinion of this office that a contract providing for the placing upon an existing highway of a layer of asphalt and aggregate, three-eighths of an inch in thickness is a contract providing for "construction" within the meaning of the Prevailing Wage Law and the provisions of the Prevailing Wage Law are applicable to such contract.

The foregoing opinion which I hereby approve was prepared by my assistant, Mr. C. B. Burns, Jr.

Very truly yours,

A handwritten signature in cursive script that reads "Norman H. Anderson".

NORMAN H. ANDERSON  
Attorney General