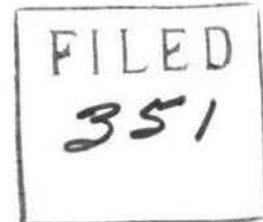


LABOR: A public school district which constructs
PREVAILING WAGE: a school building under its own super-
vision and control without contracting
for construction of such building is not required to pay the "pre-
vailing wage" rates determined by the Department of Labor and In-
dustrial Relations.

OPINION NO. 351

August 3, 1970

Honorable Melvin R. Vogelsmeier
State Representative
One Hundred Nineth District
Concordia, Missouri 64020



Dear Representative Vogelsmeier:

This letter is in reply to your request for an official opinion from this office in which you ask the following questions:

"Is a Public School District who intends to build an addition to it's facilities by acting as it's own contractor in the purchase of materials, and, the hiring by the hour - labor to build said facility obligated under Section 290.210 through 290.340 as Amended RSMo 1969 & effective October 13, 1969, for the Prevailing Wage Law Scale as applicable to said job & specified in the general specifications of said project.

"Is Opinion No. 441-67 Dated 12/12/1967 still applicable as applies to a school district being able to proceed with construction under its own supervision and control without contracting?"

Any questions in the area of prevailing wages on public works, must include a discussion of the City of Joplin v. Industrial Commission of Missouri, 329 S.W.2d 687 (Mo. 1959), in which the court stated, in discussing the constitutionality of the Prevailing Wage Act:

". . . To construe the Act as applicable

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to direct employees of public bodies would make it unconstitutional as to all cities adopting their own charters under the provisions of Sec. 19, Art. VI, of the Constitution because Sec. 22 of Art. VI provides: 'No law shall be enacted creating or fixing . . . compensation of any municipal office or employment, for any city framing or adopting its own charter . . . Furthermore, the legislative history of the Act indicates an intent to limit its application to employees of contractors constructing public works on contracts with public bodies. . . We, therefore, hold the Act does not apply to employees of public bodies. . . ." Id. 692.

As is evident, the Court in the City of Joplin held that the legislative intention of the Prevailing Wage Act was to limit its application to employees of contractors constructing public works on contracts of public bodies. As such, it becomes relevant to investigate Section 290.250, RSMo 1969, which was enacted by Senate Bill No. 142 Seventy-fifth General Assembly in lieu of Section 290.250 RSMo Supp. 1967 which was repealed by such bill, to see if the legislature has expressed a contrary intent as to that which the court found in the City of Joplin case. The amendment to Section 290.250, RSMo 1969 provides as follows:

"Every public body authorized to contract for or construct public works, before advertising for bids or undertaking such construction shall request the department to determine the prevailing rates of wages for workmen for the class or type of work called for by the public works, in the locality where the work is to be performed. The department shall determine the prevailing hourly rate of wages in the locality in which the work is to be performed for each type of workman required to execute the contemplated contract and such determination or schedule of the prevailing hourly rate of wages shall be attached to and made a part of the specifications for the work. The public body shall then specify in the resolution or ordinance and in the call for bids for the contract, what is the prevailing hourly rate of wages

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in the locality for each type of workman needed to execute the contract and also the general prevailing rate for legal holiday and overtime work. It shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workmen employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages shall be paid to all workmen performing work under the contract. It shall also require in all contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. The contractor shall forfeit as a penalty to the state, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded ten dollars for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under said contract, by him or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of sections 290.210 to 290.340 committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under said contract, to withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of sections 290.210 to 290.340, and if payment has already been made to him, the contractor

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may recover from him the amount of the penalty in a suit at law." (Emphasis supplied.)

As can be seen from the amended portion of Section 290.250, those public bodies authorized to contract for or to construct public works must make a request of the Department of Labor and Industrial Relations, previous to advertising for bids or undertaking construction, to determine the prevailing rates of wages for workmen. A full reading of the recently amended Section 290.250, RSMo 1969, however, indicates that the legislative intent is still to limit the application of the Prevailing Wage Act to employees of contractors constructing public works on contracts with public bodies. This intent can be seen from the fact that the entire legislative scheme for the amended portions of the prevailing wage on Public Works Act, would seem to indicate that the legislative intent was to limit its application to employees of contractors, to wit: Section 290.250, RSMo 1969, refers to the awarding of a contract to a contractor, the requirement of a contractor's bond, and the penalty provisions are phrased such as to be applicable to contractors and subcontractors only; Section 290.290, RSMo 1969, requires that contractors and subcontractors engaged in construction on public works must keep full and accurate records indicating the occupations and crafts of every workman and the actual wages paid, with the additional requirement that an affidavit stating the contractor or subcontractor has complied with the provisions and requirement of the Prevailing Wage Act is to be filed with the public body; Section 290.300, RSMo 1969, gives a cause of action to any workman employed by a contractor or subcontractor under a contract to a public body who shall be paid for his services in a sum less than the stipulated rates for work done under the contract; Section 290.315, RSMo 1969, requires the payment by all contractors and subcontractors of wages and legal tender, without deductions for food, sleeping accommodations or transportation. Section 290.230, RSMo 1969, provides in part as follows:

". . . Only such workmen as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job shall be deemed to be employed upon public works."

Thus, it is the conclusion of this office, that the legislative intent is to limit the application of the Prevailing Wage Act to employees of contractors constructing public works under contracts let by public bodies.

Your second question involves a former Opinion of this office, Opinion No. 441, 12-12-67, Curtis, which held that a school district

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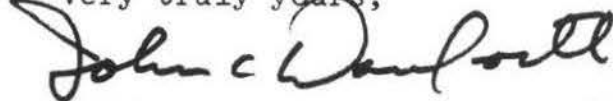
which is authorized to construct facilities could, after advertising for bids, exercise its sound discretion and reject any and all bids and proceed with construction of facilities under its own supervision and control without contracting. After a reconsideration of this Opinion in light of the recent amendments to the Prevailing Wage Act, it is the conclusion of this office that Opinion No. 441, 12-12-67, Curtis, retains its applicability, and that after a school district has requested the Department of Labor and Industrial Relations to determine the prevailing rates of wages for the workmen of the class called for by the work contemplated, the bids have been advertised, may in the exercise of its sound discretion reject any and all bids and may proceed with the construction of facilities under its own supervision and control without letting a contract.

CONCLUSION

It is, therefore, the opinion of this office that a public school district which constructs a school building under its own supervision and control without contracting for construction of such building is not required to pay the "prevailing wage" rates determined by the Department of Labor and Industrial Relations.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Kenneth L. Romines.

Very truly yours,



JOHN C. DANFORTH
Attorney General