

UTILITIES:  
PREVAILING WAGES:  
CITIES, TOWNS & VILLAGES:

The installation of publicly owned lighting equipment for streets and thoroughfares in municipalities by Union Electric or any other company

pursuant to contract with such municipalities involves "construction" of "public works" as such terms are defined in the Missouri Prevailing Wage Act. Installation of lighting equipment for streets and thoroughfares by Union Electric or another public utility pursuant to an agreement with a municipality whereby ownership of such equipment is transferred to the utility company with the agreement that such ownership will be returned to the municipality upon completion of the installation involves "construction" of "public works" as such terms are defined in the Missouri Prevailing Wage Act.

OPINION NO. 299

June 14, 1971

Mr. James J. Butler, Chairman  
Industrial Commission of Missouri  
P. O. Box 599  
Jefferson City, Missouri 65101



Dear Mr. Butler:

This is in response to your request for an official opinion concerning the applicability of the Missouri Prevailing Wage Act, as contained in Sections 290.210 to 290.345, RSMo 1969, to situations wherein municipalities in this state enter into contracts with the Union Electric Company or other public utilities for the installation of all necessary lighting equipment for the streets, alleys, overpasses, underpasses, clover leaf intersections, bridges, approaches, and other public places within such municipalities concomitant to the signing of long term contracts with the utility company for the supply of electric power for such lighting.

It is our understanding that most, if not all, of this equipment is purchased and owned by the public bodies involved when the installation is made by the utility company pursuant to contract; and that installation involves the digging of holes for poured bases to which metal poles and fixtures will be bolted, building forms for concrete work, pouring whatever concrete is necessary, installing poles, and attaching all necessary wiring.

Section 290.230 requires that all workmen employed by and on behalf of any public body engaged in the construction of public works be paid, at a minimum, prevailing hourly rate of wages for work of a similar character in the locality in which the work is being performed. Section 290.250 requires any public body undertaking or advertising for bids for the construction of public works

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to seek a determination of the prevailing hourly rate of wages and that such determination be attached to and made a part of the specifications for the work.

The term "public works" is defined as follows:

"'Public works' means all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. . . ." (Section 290.210(7), RSMo 1969)

Enclosed is a copy of Opinion No. 32, issued October 20, 1970, to the Honorable Richard M. Marshall in which we discussed the term "public works" and found it to mean structural works having a permanent character and usefulness, such as roads, buildings, bridges, and dams. On page three of that opinion, we noted the case of *Miele v. Joseph*, 280 App. Div. 408, 113 N.Y.S.2d 689 (1952) wherein it was held that the term "public works" embraced such things as bridges, sidewalks, traffic control signals, radio antennas, and park benches. Lighting equipment of the type mentioned would be very similar to a traffic device and, in our opinion, would be within the definition of the term "fixed work" as used in Section 290.210(7).

Installation of such equipment would fall within the definition of "construction" as defined in Section 290.210(1):

"'Construction' includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair."

Thus, installation of such lighting equipment involves the construction of a public work and it is necessary for municipalities and public bodies contemplating such construction to seek wage determinations from the Department of Labor and Industrial Relations and include such determinations in the specifications for such work before contracting for installation of such equipment with Union Electric or any other company.

In your letter, you also discuss a possible situation in which a municipality purchases all equipment necessary for lighting and transfers ownership of such equipment to Union Electric or another public utility with the understanding that title will be returned to the municipality upon completion of the installation of such equipment by the company. The question asked was whether such an agreement would successfully circumvent the requirements of the Missouri Prevailing Wage Act.

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First of all, any transfer of equipment owned by a municipality in this state to a private company would have to be for full value in order to avoid the prohibition of Article VI, Section 23 of the Missouri Constitution which forbids the granting of public money or things of value by a county, city or other political subdivision to or in aid of any corporation, association or individual. Assuming, therefore, that a transfer for value is made of all equipment and supplies necessary to install lighting facilities by a municipality to a public utility with the agreement that title to such equipment would be returned to the public body upon completion of the installation, it is our opinion that the Missouri Prevailing Wage Act applies to the actual construction of such equipment even though title thereto lies in the private company. By entering into such an agreement, the municipality is obviously contemplating the construction of fixed works for public use or benefit. In view of the agreement by the company to return ownership of such lighting equipment following installation to the municipality, it can hardly be argued that the construction of such equipment is not for public use or benefit. Inasmuch as this activity falls within the definition of "public works" as laid out in Section 290.210(7), the provisions of the Prevailing Wage Act apply.

#### CONCLUSION

It is the opinion of this office that the installation of publicly owned lighting equipment for streets and thoroughfares in municipalities by Union Electric or any other company pursuant to contract with such municipalities involves "construction" of "public works" as such terms are defined in the Missouri Prevailing Wage Act.

Installation of lighting equipment for streets and thoroughfares by Union Electric or another public utility pursuant to an agreement with a municipality whereby ownership of such equipment is transferred to the utility company with the agreement that such ownership will be returned to the municipality upon completion of the installation involves "construction" of "public works" as such terms are defined in the Missouri Prevailing Wage Act.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 32  
10-20-70, Marshall