

PREVAILING WAGE LAW:  
SCHOOL DISTRICTS:  
CITIES, TOWNS AND VILLAGES:  
MUNICIPALITIES:

The so-called prevailing wage law,  
as contained in Sections 290.210  
to 290.310, RSMo Cum. Supp. 1957,  
applies to and includes incorporated  
municipalities and school districts.

January 23, 1958

Honorable William E. Gladden  
Prosecuting Attorney  
Texas County  
Houston, Missouri



Dear Mr. Gladden:

Reference is made to your request for an opinion of this office wherein you inquire as to whether the popularly termed prevailing wage law, as contained in House Bill No. 294, enacted by the 69th General Assembly, applies to municipalities and school districts. Said law is contained in Chapter 290, RSMo Cum. Supp. 1957, Sections 290.210 to 290.310.

The policy of said law is declared in Section 290.220, RSMo Cum. Supp. 1957, as follows:

"It is hereby declared to be the policy of the state of Missouri that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed shall be paid to all workmen employed by or on behalf of any public body engaged in public works exclusive of maintenance work."

Section 290.230, RSMo Cum. Supp. 1957, provides as follows:

"1. Not less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed, and not less than the prevailing hourly rate of wages for legal holiday and overtime work, shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance

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work. 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.

"2. When the hauling of materials or equipment includes some phase of construction other than the mere transportation to the site of the construction, workmen engaged in this dual capacity shall be deemed employed directly on public works."

The term "public body", as used in both of the two above-noted sections and elsewhere throughout the entire chapter, is defined in Section 290.210 (6), RSMo Cum. Supp. 1957, as follows:

"(6) 'Public body' means the state of Missouri or any officer, board or commission of the state, or other political subdivision;"

The sole question then is as to whether municipalities and school districts are political subdivisions.

First, in regard to municipalities, your attention is invited to the case of State ex inf. Ellis, ex rel. Patterson et al. v. Ferguson, 333 Mo. 1177, 65 S.W.2d 97, wherein the court stated:

"Is a city of the third class a political subdivision? A standard work on municipal corporations so defines it in the following language: 'A municipal corporation, in its strict and proper sense is a body politic and corporate constituted by the inhabitants of a city or town for the purposes of local government thereof. Municipal corporations as they exist in this country are bodies politic and corporate of the general character above described, established by law as an agency of the State to assist in civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated.' Dillon (5th Ed.) vol. 1, § 31. (Italics ours.)

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"Section 47 of article 4 of the original Constitution, prohibiting the lending of credit, refers to counties, cities, towns, or townships as 'political corporations or subdivisions of the State.' (Italics ours.)

"We approve the following observations made in *Kinney v. City of Astoria*, 108 Or. 514, 528, 217 P. 840, 845: 'Pure municipal corporations, such as cities, are merely instrumentalities of the state, established for the convenient administration of local government; they are state governmental agencies; they are auxiliaries of the state for the purpose of self-government; they are mere political subdivisions of the state created by authority of the state for the purpose of exercising a part of its powers.'"

In regard to school districts, your attention is invited to the case of *State ex inf. McKittrick, v. Whittle*, 333 Mo. 705, 63 S.W.2d 100, wherein the court stated:

"Respondent next contends that a school district is not a political subdivision of the state. The authorities are to the contrary. It is defined by a standard text as follows: 'A school district, or a district board of education or of school trustees, or other local school organization, is a subordinate agency, subdivision, or instrumentality of the state, performing the duties of the state in the conduct and maintenance of the public schools.' 56 C.J. 193.

"This definition is approved by this court in *State ex rel. Carrollton School Dist. v. Gordon*, 231 Mo. 547, loc. cit. 574, 133 S.W. 44, 51, in which we said: 'A school district is but the arm and instrumentality of the state for one single and noble purpose, viz., to educate the children of the district; a purpose dignified by solemn recognition in our Constitution (section 1, art. 11 \* \* \*), reading: "A general diffusion of knowledge and intelligence being essential to preservation

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of the rights and liberty of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years." In obedience to that constitutional mandate, the General Assembly has established such schools and given over to school districts, acting through boards of directors, the single duty and authority to maintain them.'

"In *City of Edina to use v. School District*, 305 Mo. 452, loc. cit. 461, 267 S W. 112, 115, 36 A.L.R. 1532, we also said: 'Under the Constitution of 1875, the public schools have been intrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function and not a special corporate or administrative duty. They are purely public corporations, as has always been held of counties in this state.'

\* \* \* \* \*

"Thus it appears that a school district is a political subdivision of the state within the meaning of section 13, art. 14, of the Constitution."

In view of the foregoing noted case authorities, we are of the opinion that municipalities and school districts are, in the usual and ordinary sense, political subdivisions and that the General Assembly intended to include municipalities and school districts within the term "public body" as that term is used in Chapter 290, Sections 290.210 to 290.310, RSMo Cum. Supp. 1957.

#### CONCLUSION

Therefore, it is the opinion of this office that the so-called prevailing wage law, as contained in Sections 290.210 to 290.310, RSMo Cum. Supp. 1957, applies to and includes incorporated municipalities and school districts.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton  
Attorney General

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