Mr. L. Derrell Weaver  
Commissioner, Division of Labor  
225 State House  
Indianapolis 4, Indiana  

Dear Mr. Weaver:

This will acknowledge receipt of your letter requesting an Official Opinion with respect to certain problems involving the prevailing wage rate law of Indiana. Your questions read as follows:

[1] "Does Chapter 319, Acts of 1935 apply to construction, maintenance or repair work, other than the construction of highways, streets and bridges, performed by any contractor selected by the Indiana State Highway Department?"

[2] "Where a contractual relationship exists, and a contract executed, for the performance of construction, maintenance or repair other than the construction of highways, streets or bridges, does the prevailing wage rate law apply to all types of construction, maintenance or repair for the Indiana Highway Department?"

The application of Chapter 319, Acts of 1935, as found in Burns' (1951 Repl.), Section 53-301 et seq. is limited in specific terms to contracts "for the construction of any public work." Acts of 1935, Ch. 319, Sec. 1, as found in Burns' (1951 Repl.), Section 53-301. However, the same section contains three express provisions and exceptions pertinent to your questions, as follows:

"Provided further, That the provisions of this act shall not apply to contracts let by the state highway commission of Indiana for the construction of highways, streets and bridges: Provided further, That on all such contracts let by the state highway commission of Indiana, the contract-price for which is to be paid in whole or in part with funds of the state of Indiana, the scale of wages and the classification of labor shall be
the same as that approved by the bureau of public roads of the United States department of agriculture on highway projects. * * * Provided further, That the provisions of this act shall not apply to any such public projects in this state the letting of which would otherwise be subject to the provisions hereof, and which are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making such grant shall consent in writing that the provisions of this act shall be applicable to such project: * * *.” (Our emphasis)

The same word, “construction,” is used in both places in the statute with presumably the same meaning. It is thus apparent that any contract for the construction, maintenance or repair of highways, streets or bridges which is considered to be included in the phrase “contract * * * for the construction of any public work” would be excepted from the provisions of the act as a contract for the “construction” of highways, streets, or bridges. Your questions then have specific reference to contracts let by the State Highway Department for the construction, maintenance and repair of some public work other than highways, streets and bridges. This office has previously considered the extent of the meaning of the word “construction” as used in this statute, and I have stated that it is my opinion that the term includes maintenance and repair.

1953 O. A. G., page 400, No. 82.

In conclusion, therefore, the answers to your questions are as follows: Any contract for the construction, maintenance or repair of a highway, street or bridge, let by the State Highway Department of Indiana, is not affected by the provisions of Chapter 319, Acts of 1935, except that the scale of wages and the classification of labor approved by the Bureau of Public Roads on highway projects must be used if any part of the contract price is to be paid with funds of the State of Indiana; and the prevailing wage rate law in question does apply to all other contracts for the construction of public works by the State Highway Department of Indiana, except that approval of the participating federal department must be obtained if part of the consideration is to be paid on the contract with federal funds.