



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

January 2, 2009

[REDACTED]

Re: Minimum Contract amount in Prevailing Wage matters
Our File No. RO-08-0160

Dear [REDACTED]:

Your letter of December 3, 2008, to [REDACTED] has been referred to Counsel's Office for response. Your position, if I interpret your letter correctly, is that Article 8 of the Labor Law, the prevailing wage law, is only applicable to projects whose monetary amount is in excess of \$20,000.00. You base this claim on language contained in Labor Law §220 (3) to the effect that the fiscal officer (the Commissioner of Labor) "ascertain and determine the schedules of supplements to be provided and wages to be paid to workers laborers and mechanics on such public work, prior to the time of the advertisement for bids." Your argument then notes that because no bids are necessary under §103 of the General Municipal Law for projects less than \$20,000.00, the prevailing wage law must be limited to those projects in excess of \$20,000.00. Apparently you believe that the intent of Labor Law §220 (3) is to limit its applicability to those projects for which bids are required. Your position is contrary to the clear meaning of the Labor Law as it has been interpreted for over a hundred years.

The prevailing wage law is based upon a provision in the New York State Constitution (Article I, Section 17) that requires the payment of prevailing wage on all public work projects. That constitutional provision carries with it no contractual monetary limit in regard to its applicability. There is no monetary limit on any public work contract contained anywhere in Article 8 of the Labor Law. There are limits to prevailing wage law applicability contained in both the federal Davis Bacon Act and in Article 8's companion legislation, Article 9, Prevailing Wages for Building Service Employees. Article 9 specifically limits its applicability to those contracts in excess of \$1,500.00 (Labor Law §230 (1)) and uses language identical to that in Article 8 with respect to the provision of a wage schedule "prior to the time of the advertisement for bids on such contract" (Labor Law 231(4)). If the legislature had intended to provide a minimum contract amount in Article 8, as it did in Article 9, it would have done so in the clear language that was employed in Article 9. Absent such intent to limit the applicability of Article 8 in some monetary fashion, the statute must be given its plain or literal intent. *Mount v Mitchell* 31 N.Y. 350; *People ex. rel. Lehigh v. Schmer* 217 NY 443.

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It should also be noted that Article 9 work is also subject to bidding for projects in excess of \$20,000.00 under Section 103 of the General Municipal Law and \$50,000.00 under Section 137 of the State Finance Law. Despite this fact, the statute itself sets a minimum amount to which it is applicable. If your position were correct, the language of Article 9 insofar as it sets a minimum contract to which it is applicable would be superfluous. Statutes may not be interpreted in such a manner; rather, meaning must be assigned to each word in a statute. *In Re Smathers' Will*, 309 NY 487 (1956). It would be impossible to interpret Article 9 as having a monetary limit of \$20,000.00 when its specific terms impose such a limit of \$1,500.00. In the case of Article 8, which specifically omits any minimum contract amount in regard to its applicability, no such minimum contract amount can be inferred from the statute.

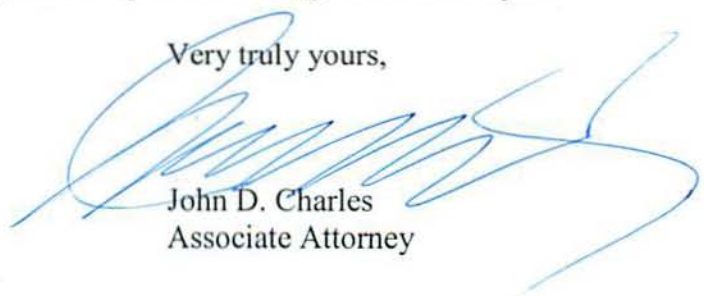
In addition, the language upon which you rely in Labor Law §220 (3) is not related to any monetary limit in the prevailing wage law, but simply provides a time frame before which the Commissioner must issue schedules of wages and supplements. The Commissioner accomplishes that task by issuing such schedules on July 1 of each year, thereby establishing the wages to be paid on a public work project "prior to the advertisement of bids." In practice any municipal entity merely has to attach the then-current wage schedule to its bid package, and both the Commissioner and the municipality will have met their obligations under §220 (3).

The fact that the General Municipal Law provides that bids are only required in matters in excess of a certain monetary amount is unrelated to the prevailing wage requirements of the Labor Law. Those two statutes stand on their own; the General Municipal Law requires that entities put projects out for bid when the project exceeds a certain sum; the Labor Law requires that prevailing wages be paid on *all* public work projects. There is no conflict between these separate legislative enactments.

As to your question as to the location of opinions related to the definition of "public works," the Department relies on the opinions of the courts in that regard as rendered over the years, opinions of counsel in that regard, and internal memoranda of the Bureau of Public Work. The Labor Law does not define "public works project", but case law requires that the focus be on the purpose, nature and function of the construction (see, Matter of Vulcan Affordable Hous. Corp. v. Hartnett, 151 A.D.2d 84, 545 N.Y.S.2d 952; Matter of Penfield Mechanical Contrs. v. Roberts, 119 Misc.2d 105, 462 N.Y.S.2d 393, *affd.* 98 A.D.2d 992, 470 N.Y.S.2d 1021, *affd.* 63 N.Y.2d 784, 481 N.Y.S.2d 72, 470 N.E.2d 870; Matter of Erie County Ind. Dev. Agency v. Roberts, 94 A.D.2d 532, 465 N.Y.S.2d 301, *affd.* 63 N.Y.2d 810, 482 N.Y.S.2d 267, 472 N.E.2d 43). Most of the Department's opinions are kept by the Bureau in a volume called the "Public Work Case Digest", which would be available under a Freedom of Information Request upon payment of the applicable fee. I can assure you, however, that the question you have raised is a novel one on which the Department has not previously issued an opinion.

Please advise if you have any further questions in regard to this subject.

Very truly yours,



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Opinion file
Dayfile