



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

May 12, 2010



Re: Stewart Airport / Port Authority / Wicks
Our File No. RO-10-0076

Dear [REDACTED]:

As per our discussion of last week and the information you forwarded to us concerning the construction at Stewart Airport by the Port Authority of New York and New Jersey, we have researched the applicability of the Wicks Law (State Finance Law (SFL), Section 135 and General Municipal Law (GML), Section 101, to the project. As you noted, bidding on this project was based on a design/build basis, and no separate specifications were requested during the bidding process.

The Port Authority of New York and New Jersey is a "body politic and corporate" pursuant to the New York Unconsolidated Laws, Section 6404. As such, it has been determined to be a "municipal corporate instrumentality", but is not a state agency for purposes of the Eleventh Amendment to the United States Constitution. *Feeney v Port Authority* 873 F2d 628, affd. 495 US 299, *People v Benson* 39 Misc2d 576. The Port Authority performs essential governmental functions. *Port Authority v J. E. Linde*, 205 Misc 110. The Port Authority has been found to be subject to the prevailing wage law of the state in which the work is performed when that work is performed by individuals other than Port Authority employees. *Agesen v Catherwood*, 26 NY 521. There is a distinction in *Agesen* between "internal operations" apparently meaning personnel operations of the Authority itself, and "external relations" which appear to involve third parties performing work for the Authority through contract. As a result, the Port Authority's contractors must pay prevailing wages when they work in either New York or New Jersey.

SFL, Section 135 (Wicks law) requiring the issuance of separate specifications for certain types of work applies to "every officer, board, department, commission or commissions." The enumerated listing of covered entities does not include authorities. Courts have held that the statute does not apply to the NYS Thruway Authority, *Plumbing Contractors v State* 5 NY2 420 (until the act was amended to specifically provide that separate bidding was required). It has also been determined that the separate bidding requirements do not apply to the Power Authority

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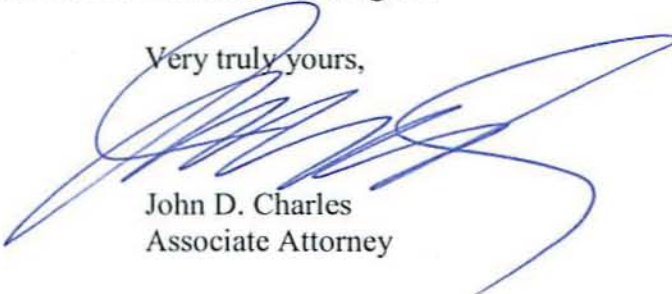
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

1955 Op. Atty. Gen. 255. The City University has been found not to be subject to GML, Section 101, which applies to "every officer, board or agency of a political subdivision or of any district therein". *Mazzeo v Murphy* 137 Misc2d 853. Free Association Libraries, being supported by public funds from a school district have been determined not to be subject to GML, Section 101. *French v Three Village Central School Dist.* 72 AD2d 196. All these determinations have a common basis: the Wicks provisions do not specifically identify the entities under review as being covered by its provisions and the enabling language creating these entities does not make them subject to the separate bidding requirements similar to those found in the Wicks law.

The same can be said with regard to the Port Authority. The language of the Wicks law does not specifically mention public authorities as being subject to its requirements. Additionally, there is no language within the enabling legislation that created the Port Authority which requires its projects to be bid using separate specifications. As there is no separate specification requirement with regard to the Port Authority, either in its enabling legislation or through the State Finance Law or the General Municipal Law, this Department has no legal authority to invoke Section 224 of the Labor Law to require the Port Authority to issue separate specifications for the work to be performed on the Stewart Airport project.

Please advise if you need any further information in this regard.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John D. Charles", is written over the typed name and title.

John D. Charles
Associate Attorney

cc: Pico Ben-Amotz
Chris Alund
David Bouchard
Dayfile