



The Commonwealth of Massachusetts

Department of Labor and Industries

Office of the General Counsel

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July 17, 1995

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BY FAX AND U.S MAIL

Thomas RG Simmons
Administrator
The Martha's Vineyard Commission
Box 1447
Oak Bluffs, MA 02557

Re: Applicability of Massachusetts's Prevailing Wage Requirements to the Martha's Vineyard Commission.

Dear Mr. Simmons:

In response to your request, the Department of Labor and Industries ("DLI") has investigated the question of whether the Martha's Vineyard Commission (the "Commission") is subject to the Massachusetts prevailing wage requirements contained in Mass. Gen. Laws ch. 149, § 26 through 27H for the upcoming bid for office renovations and in all future bids for construction, alteration and repair of its facilities.

Section 26 of the above-referenced statute states that the prevailing wage law applies to "the construction of public works by the commonwealth, or by a county, town or district" Thus, the determinative issue in this case is whether the Commission is an agency of the Commonwealth versus a private entity for purposes of the statute. Based on the powers and duties of the Commission as delineated in its enabling legislation, 1977 Mass. Acts ch. 831, § 3, it is the determination of DLI that the Commission is an agency of the Commonwealth for purposes of the prevailing wage law.

The Commonwealth's Administrative Procedure Act, Mass. Gen. Laws ch. 30A, defines an agency in § 1 as "any department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct

adjudicatory proceedings ..."

Section 3 of the Commission's enabling legislation explicitly empowers the Commission to adopt and enforce regulations:

The commission may adopt regulations for the control of districts of critical planning concern pursuant to sections eight to eleven, inclusive, and to specify conditions and modifications necessary for the control of developments of regional impact pursuant to sections twelve to sixteen, inclusive.

The enabling legislation also authorizes the Commission to conduct adjudicatory proceedings by holding public hearings on "all applications for development permits for developments of regional impact" (ch. 831, § 14), and for "making a finding of the probable benefits and detriments of a proposed development" (ch. 831, § 15).

In addition, the enabling legislation specifies several other powers and duties of the Commission which are characteristic of public agencies: 1) Its purpose to "protect the health, safety, and general welfare of island residents and visitors" (ch. 831, § 1); 2) The election of its members concurrent with biennial state elections (ch. 831, § 2); and 3) Its ability to "enforce any decisions, conditions or restrictions it may impose upon a development by recording certificates of noncompliance with appropriate plan or title references in the registry of deeds" (ch. 831, § 17).

Moreover, the fact that the Commission's activities are funded, in large part, through public monies further supports DLI's determination that the construction, alteration, or repair of its facilities constitutes "public works" for purposes of the prevailing wage statute. According to its enabling legislation, the Commission, although encouraged to raise funds from non-public sources, obtains a substantial portion of its revenue from property tax assessments levied through each member town and federal, state, and county governments (ch. 831, § 4). In fact, Thomas Simmons, administrator at the Commission, informed DLI that the Commission receives approximately 40% of its funding from the towns that make up the Commission and 30% from the Commonwealth.

Based on the foregoing, the Martha's Vineyard Commission is an agency of the Commonwealth for purposes of the prevailing wage law and, therefore, any construction, alteration, or repair of its facilities which it undertakes will be subject to the statute's wage requirements.

Please feel free to contact me if I can provide further assistance.

Very truly yours,



Spencer C. Demetros
General Counsel
Dept. of Labor and Industries

cc: Terence P. McCourt, Esq.
Executive Office of Labor
Robert J. Prezioso
Department of Labor and Industries