

The Commonwealth of Massachusetts  
DEPARTMENT OF LABOR AND INDUSTRIES

DIVISION OF OCCUPATIONAL STATISTICS  
100 CAMBRIDGE STREET, 11TH FLOOR  
BOSTON, MASSACHUSETTS 02202-0003

ROBERT J. PREZIOSO  
Director

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October 16, 1995

David P. Mullen, Esq.  
Deputy Chief Counsel  
Massachusetts Highway Department  
Ten Park Plaza  
Boston, MA 02116-3973

Re: Tow truck operators on Routes I-93 and 3; Massachusetts Highway  
Department Contract (Federal Aid Project No. CM-093-1 [413]).

Dear Mr. Mullen:

In response to your letter of October 11, 1995, The Department of Labor and Industries ("DLI") has determined that the operation of tow trucks on the above-referenced project does not require prescribed rates of wages established under M.G.L. c. 149, §§ 26 - 27F.

First, the operation of tow trucks are not subject to the requirements of M.G.L. c. 149, §§ 26 - 27D. Those provisions apply only if the work at issue constitutes "public works construction." The work of towing disabled vehicles from a roadway cannot be considered "construction" under any reasonable definition of that term.

Second, the prevailing wage requirements of M.G.L. c. 149, § 27F also are not applicable to the operation of tow trucks under the present contract. Unlike §§ 26 - 27D of the Massachusetts's prevailing wage statute, § 27F only requires that the work in question be "public works" generally as opposed to construction work. Commonwealth v. W. Barrington Co., Inc., 5 Mass. App. 416, 420 (1977). In W. Barrington, the court established that a function can be considered "public works" if it is the sort of activity commonly performed by or under the direction of public agencies or municipalities.

DLI believes that, although a limited number of public entities own their own tow trucks, the majority of towing services in the Commonwealth are provided by private towing companies. Moreover, the cost of towing services are almost always paid by the individual vehicle owners. Although under the present contract for towing services there is some beneficial public purpose, the fact remains that the obligation to remove one's car from the Commonwealth's roads ultimately rests with the owner of the vehicle. For these reasons, DLI does not believe that the operation of tow trucks is "public works" for purposes of the prevailing wage requirements of § 27F.

If you have any further questions regarding this matter, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert J. Prezioso".

Robert J. Prezioso

cc: Spencer Demetros, DLI General Counsel