

The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

March 3, 1997

Mr. Tim Oppenheimer, Esq.
Pioneer Valley Building and
Construction Trades Council
185 Industry Avenue
Springfield, MA 01104

Re: Prevailing Wage Applicability/Modular Construction Project

Dear Mr. Oppenheimer:

Your letter to Helen Moreschi, Director, Attorney General's Office of Fair Labor, dated January 10, 1997 concerning the bid for Modular Building Construction and Site Work was forwarded to me for a response. In your letter, you request that the Department of Labor and Workforce Development, Division of Occupational Safety issue a determination on whether the construction of modular buildings and other on-site work by a charter school is a "public works construction project" subject to the requirements of the prevailing wage law (M.G.L. c. 149, ss. 26-27H).

The project clearly falls within the definition of "construction" contained in section 27D. Additionally, the construction work described in your letter and contained in the lease agreement between the City of Springfield and Sabis International will engage the work of "mechanics and apprentices, teamsters, chauffeurs and laborers" as mentioned in section 26. Thus, the issue at hand is whether the construction/site work of modular buildings and improvements to an existing building by the charter school, as established by M.G.L. c. 71, s. 89, constitutes "public works" for purposes of the statute.

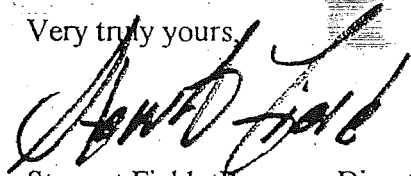
M.G.L. c. 71, s. 89 clearly states that a "charter school shall be a public school". Moreover, this designation permeates the entire enabling statute. Other provisions declare a charter school to be a "body politic" and subject to "provisions of law regulating other public schools". Clearly, if a public school were to contemplate a contract such as the one in question, the prevailing wage law would apply to the construction related site work.

Upon review of your letter, the attached scope of work, the lease agreement, the charter and the enabling statute concerning charter schools, it is the position of this Division that the project is "public works" construction for purposes of the statute and therefore is subject to the Commonwealth's prevailing wage requirements.

This determination is based on the information referred to above and is confined to this instance. If additional facts concerning the project come to your attention, please notify us immediately so that we may consider such facts in reassessing the determination contained herein.

If you have any questions concerning this matter, do not hesitate to call me.

Very truly yours,



Stewart Field, Program Director
MA Div. of Occupational Safety

cc. Helen Moreschi, Director
Attorney General's Office of Fair Labor

Spencer Démetros, General Counsel
MA Dept. of Labor and Workforce Development

Linda Hamel, General Counsel
MA Div. of Occupational Safety

Scott Hamilton
MA Dept. of Education

Michael Glickman, Director
Sabis International