

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

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

September 9, 1997

Mark Bobrowski, Esq.
17 Cocasset Street
Foxborough, MA 02035

SUBJECT: Massapoag Estates

Dear Mr. Bobrowski:

I have reviewed your letter dated July 31, 1997, concerning whether the Massachusetts prevailing wage law, as prescribed by M.G.L. c. 149, ss. 26 and 27, is applicable to certain construction related work at Massapoag Estates located in the Town of Mansfield. According to your letter and our subsequent telephone conversation, my understanding of the facts are as follows:

1. Massapoag Estates is a subdivision of the Town of Mansfield and is a private development financed with private money.
2. Prior to allowing Massapoag Construction Company to develop the property, the Mansfield Planning Board required a performance guarantee to secure the installation of various infrastructures at Massapoag Estates. The guarantee was in the form of money deposited in a passbook account naming the Mansfield Planning Board as the benefactor.
3. In June of 1997, the Mansfield Planning Board ruled Massapoag Construction Company in default of its obligations to construct various infrastructures and obtained the funds deposited in the passbook account (\$85,000).
4. The Mansfield Planning Board will hire a contractor to complete the remaining infrastructure at Massapoag Estates. The funds remaining in the passbook account are deemed to be insufficient to complete the necessary construction, however, no public money is to be used to complete work at Massapoag Estates.
5. Once construction is complete, the maintenance of Massapoag Estates will be the obligation of the homeowners and the developer. This arrangement will continue unless the Town of Mansfield votes to accept the infrastructure at Massapoag Estates into the public domain.

M.G.L. c. 149, s. 26 requires the Director of the Department of Labor and Workforce Development to set hourly wage rates which must be paid to "mechanics and apprentices, chauffeurs and laborers" who are employed "in the construction of public works." It is undisputable that any contractor the Mansfield Planning Board hires to complete the infrastructure at Massapoag Estates will employ "mechanics and apprentices, chauffeurs and laborers." Thus, the only issue is whether such individuals are engaging in the "construction of public works."


Section 27D of the above-referenced law defines "public works construction" and, consequently, confines the applicability of prevailing wage requirements to construction, additions and alterations of public buildings and public works. In this case, Massapoag Estates is a private development and will remain so until an affirmative vote by the Town of Mansfield. The only reference to the prevailing wage law applying the work conducted on private property is contained later in the same section where demolition of *any* structure is ordered by a public authority to preserve the public health. This is not the case here.

Given the facts surrounding your inquiry, the remaining construction at Massapoag Estates cannot be construed as "public works construction" for the purpose of the prevailing wage law.

This determination is based on the facts contained in your July 31st letter, our subsequent conversation and is confined to this particular situation. If additional facts concerning the work in question come to your attention, please notify me immediately so that I may consider such information in a reassessment of this decision.

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

Sincerely,


Stewart Field, Program Manager
Mass. Div. of Occupational Safety

cc: Robert Prezioso, Deputy Director
Mass. Div. of Occupational Safety

Linda Hamel, General Counsel
Mass. Div. of Occupational Safety

Helen Moreschi, Division Chief
Attorney General's Office of Fair Labor