

Prevailing Wage Opinion Letter 2001 04 – 11.28.01

Opinion Letter
PW-2001-04-11.28.01
November 28, 2001

Re: Applicability of Prevailing Wages for an Electrician doing Maintenance Work on an As-Needed Basis on Buildings in the XXXX County Complex.

Your letter dated November 2, 2001 to Assistant Attorney General Francis X. Flaherty, Jr., of the Office of Attorney General, has been forwarded to me for a response. In your letter, you ask the Attorney General's Office to reconsider a prior determination made by the Division of Occupational Safety ("DOS") concerning the applicability of the prevailing wage law to a particular project involving electrical repairs in buildings in the XXXX County Complex.

Determinations on the applicability of the prevailing wage law to particular projects, awarding authorities, and categories of work are made by DOS, such as Ms. Hamel's letter to Mr. Flaherty dated August 12, 1999, and are not appealable to the Attorney General's Office for reconsideration. The Attorney General's Office is responsible for enforcing the prevailing wage law on projects where DOS has determined the statute applies.

Your argument that repairs to electrical fixtures are not "construction of public works", as that term is used in M.G.L. ch. 149, sections 26 and 27 is incorrect. The term "construction of public works" is defined in M.G.L. ch. 149, section 26D to include "additions to and alterations of public works" which unequivocally includes electrical repairs, including the repairing of light fixtures, in public buildings.

The fact that this work will be conducted on an "as-needed basis" and that you have categorized this work as "maintenance," has no bearing on the applicability of the prevailing wage law.

The prevailing wage law applies to all *employees* engaged in the construction of public works, except for owner-operators and independent contractors who transport gravel or fill to or from a public works site as specifically excepted by a provision in M.G.L. ch. 149, section 27. Thus owner-operators and independent contractors are not required to pay prevailing wage rates to themselves on public works construction projects. They must, however, pay prevailing wage rates to all employees, including family members. I am including a DOS applicability determination addressed to YYYY, Town of ZZZZ, dated March 10, 2000, in reference to owner-operators and independent contractors.

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

Sincerely,
Ronald E. Maranian
Program Manager