

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF OCCUPATIONAL SAFETY  
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August 7, 2001

Constance M. McGrane  
Deputy Bureau Chief  
Business and Labor Protection Bureau  
Office of the Attorney General  
200 Portland Street  
Boston, MA 02114

Re: Prevailing Wage Applicability; Leased Office Space, Springfield, MA

*Connie*  
Dear Ms. McGrane:

This letter responds to your request for a determination of the applicability of the Massachusetts prevailing wage law, M.G.L. ch. 149, §§ 26 - 27D, to work performed in connection with a lease to be signed between the Division of Capital Asset Management and Sovereign Bank for 6,700 square feet of office space in a private building located at 1350 Main Street, Springfield, MA. The Office of the Attorney General will be occupying the space.

The lease documents provided to me contain several references to the "Landlord's Improvements" that will be completed before the lease takes effect. According to those documents, the landlord will finance improvements to the building prior to occupancy, ensuring a satisfactory outcome that complies with all applicable laws, ordinances, codes, and regulations. No public money will be expended for the improvements and the Office of the Attorney General will not begin paying rent until the improvements are completed.

Improvements to the office space are being made as a condition of occupancy, not as a call for public construction. According to page 10 of the lease documents:

It is understood and agreed that Landlord and its architects and engineers shall be fully and completely responsible for all aspects of the design, engineering and construction of the Landlord's Improvements. No comments on or approval by Tenant or the Working Drawings or any other advice or opinions provided by



Tenant concerning the design or construction of the Landlords's Improvements shall render Tenant responsible for the design, engineering or construction of the Landlord's Improvements or invest Tenant with any responsibility for defects therein or other Building conditions.

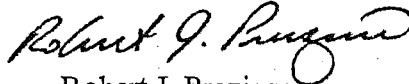
This statement clearly identifies the landlord, and not the Commonwealth, as the party responsible for all aspects of the improvements. It also affirms that the landlord is in full control of the work and the outcome.

Given that this work is not a call for construction by a public agency, it will not be financed with public money, it does not involve a public building or public property, and the direction and outcome of the work is wholly the responsibility of the landlord, this project cannot be considered a public works project for purposes of the prevailing wage law.

This determination is based on the documents provided to me. If any of the facts or underlying conditions change, please contact me so that I may re-evaluate this issue.

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

Very truly yours,



Robert J. Prezioso  
Deputy Director

cc: Kathryn Palmer, General Counsel, DOS  
Ronald E. Maranian, Program Manager, DOS  
David B. Perini, Commissioner, Division of Capital Asset Management