



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

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March 30, 2016

Michelle Gomes
Manager of Society Operations
Buttonwood Park Zoological Society, Inc.
45 Hawthorn Street
New Bedford, MA 02470

Re: Construction of Addition and Renovations to Aquatic Environment Center

Dear Ms. Gomes,

This letter is written in response to your request for an opinion from the Department of Labor Standards regarding the applicability of the Prevailing Wage Law, G.L. c. 149, §§ 26 & 27, to the construction and/ or alteration of exhibits within and around the Aquatic Environment Center located within the Buttonwood Park Zoo.

Any time there is "construction" of "public works" "by a public entity" in Massachusetts, prevailing wages must be paid.¹ The Buttonwood Park Zoo is owned and operated by the City of New Bedford. Thus, the only open question, the answer of which will steer our conclusion, is whether this proposed project is being undertaken "by a public entity".²

The Buttonwood Park Zoological Society, Inc, (hereinafter the "Society") is a nonprofit 501(c)(3) corporation organized to support the programs and missions of New Bedford's Buttonwood Park Zoo. The Society lists its official address as 425 Hawthorne Street, New Bedford, Massachusetts, which is the Zoo's address. The Society has raised money and wants to finance the Zoo's proposed expansion and it questions whether prevailing wages will need to be paid for the anticipated public works construction where the project will be completed without contribution from the City.

¹ Determining whether a project is governed by M.G.L. c. 149, sec.s 26 & 27 requires a simple three-pronged inquiry:

- 1.) Is the project "construction"?
- 2.) Is the Project "public works"? and,
- 3.) Is the project being undertaken by a "public entity"?

² The Prevailing Wage Law only applies to construction of public works done by the commonwealth, or by a county, town, authority or district as well as their contractors and subcontractors (herein referred to in the aggregate as a "public entity")

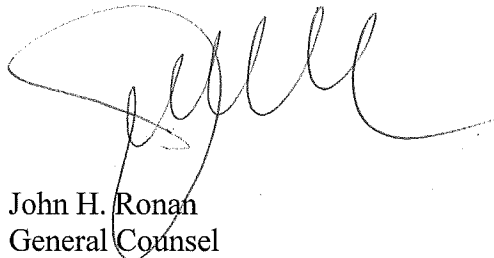
In determining whether a project is being undertaken "by a public entity", more than just the financing must be considered. This Department considers all relevant factors bearing on this issue, including: who owns the property, who will control it, who will manage it, and whether the facility will be of a specialized nature that would render it unsuitable for another commercial purpose without significant renovations.³

In weighing these elements here, DLS concludes that the unique design of an animal Aquatic Center within the confines of the public Zoo is not a structure that will ever be used for another purpose without substantial modifications. The Aquatic Center is public property, it will represent an expansion of the public Zoo and it will be managed and staffed by City employees. Before, during and after the construction, the Zoo will remain under the legal control of the City. And, despite the efforts of the Zoological Society to differentiate itself from the Zoo, this project is being undertaken for the benefit of the Zoo, which is a Department of the City of New Bedford. Considering the "totality of these circumstances", this Department concludes that the proposed addition to New Bedford's Buttonwood Park Zoo is being undertaken "by ... a county, town, authority or district, or by persons contracting or subcontracting for such works". Accordingly, the proposed construction and/or alteration of the Buttonwood Park Zoo must comply with M.G.L. c. 149, sec. 26 & 27, including the payment of wages at the prevailing rates.⁴

This decision is intended to be limited to the unique and specific facts of this proposed project. Future determinations in New Bedford and elsewhere will continue to be made on a case-by-case basis after analysis of all relevant factors.

I hope this decision was helpful. If I can be of further assistance, please do not hesitate to call.

Sincerely,



John H. Ronan
General Counsel

³ Letter to Stapczynski, Town of Andover, July 23, 2007 (The prevailing wage law applies to the construction of a youth center that will be turned over to the town upon completion of the project. The ultimate goal of the project is to build a youth center that can be operated and staffed by the town for years to come.)

⁴ "The prevailing wage law ensures that public facilities, which must be maintained with public funds throughout years of use, are constructed by well-trained and skilled tradespersons." Letter to Stapczynski.