



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

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November 22, 2016

Daniel S. Field, Esq.
Morgan, Brown & Joy, LLP
200 State Street
Boston, MA 02109

Re: Applicability of M.G.L. c. 149, s. 27F to Proposed Textile Collection

Dear Attorney Field,

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, M.G.L. c. 149, §27F to the private collection of clothes, shoes, leather goods, and small household items suitable for resale at thrift stores.

Your client, a private entity, is proposing to provide a pickup service for these specific reusable items that presumably it would then resell. Your client would bear all associated costs including the cost to purchase vehicles, hire employees, rent facilities for sorting and processing, and organize the sale and/or disposal of the collected materials. No costs are to be passed on to municipalities where these services are provided, although your client would pay participating municipalities a fee determined by the tonnage of reusable materials collected.

You have asked for an opinion on whether the signing a contract with a municipality to memorialize the tonnage-fee agreement would trigger the Prevailing Wage Law. Specifically, you question the applicability of M.G.L. c. 149, §27F, which states in relevant part, *"No agreement of lease, rental or other arrangement, and no order or requisition under which a truck or any automotive or other vehicle or equipment is to be engaged in public works by the commonwealth or by a county, city, town or district, shall be entered into or given by any public official or public body unless said agreement, order or requisition contains a stipulation requiring prescribed rates of wages, as determined by the commissioner, to be paid to the operators of said trucks, vehicles or equipment."*

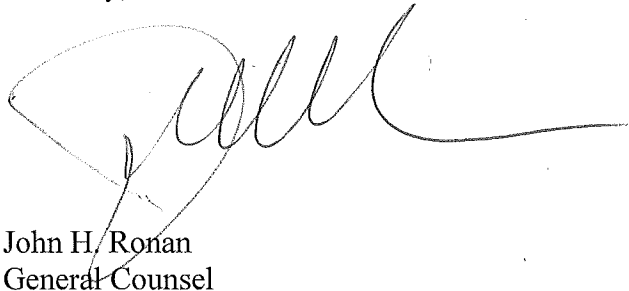
The Prevailing Wage Law was born of legislative action and its existence is dependent on statutory authority. By its terms, §27F, only applies when two criteria are met:

1. A public entity enters into an "agreement of lease or rental, or other arrangement... for a vehicle or equipment", and

2. That "vehicle or equipment is... engaged in public works by the commonwealth or by a county, city, town or district".

In analyzing the second prong under 27F, DLS examines the nature of the proposed project to determine if it will be infringing upon functions commonly performed by municipal departments of public works or is similar in nature to work carried out by state agencies or departments. *Commonwealth v. W. Barrington Company, Inc.*, 5 Mass. App. Ct. 416 (1977). Projects not historically performed by municipal or state governments are not considered "public works" and therefore are not covered by the M.G.L. c. 149, §27F. For example, "Transportation and disposal of sludge from a wastewater treatment facility in Barrington did not constitute being "engaged in public works". (Wage Determination Appeal, Waste Stream Environmental, Inc., et al dated January 25, 1995) neither did the collection of metal and construction debris in Williamstown (Letter to Briggs dated April 8, 1996) nor the hazardous product collection program in Dover (Letter to Sullivan date January 25, 2002). The proposed activity at issue here, textile collection, is not an activity typically carried out by state or local government. Rather, it is performed by various charitable organizations such as Big Brother/Big Sister. Therefore, considering the facts specific to this particular situation DLS finds that the requirements of M.G.L. c. 149, s. 27F do not apply to this proposed project.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Ronan", is written over a faint, circular official stamp or seal.

John H. Ronan
General Counsel