



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

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July 17, 2018

Mike Gagne
Town Administrator
Town of Mattapoissett
16 Main Street
Mattapoissett, MA 02739

Re: Construction of Bike Path

Dear Ms. Gagne,

This letter is written in response to your request for a determination from the Department of Labor Standards regarding the applicability of the Prevailing Wage Law, G.L. c. 149, §§ 26 & 27, to the construction of a half-mile section of bike path within the Town of Mattapoissett sometimes referred to as the "Marion Connection". This segment of pathway shall become incorporated into and form an integral part of the Mattapoissett Rail Trail, a 4 ½ Mile bicycle and pedestrian trail that is in and of itself part of a larger network of bike paths intended to stretch from Rhode Island to Buzzard's Bay. The conception of the bike path dates back twenty years and has involved the Commonwealth of Massachusetts, the Federal Government and several municipalities. Sections of the overall project are in various stages of completion from planning to finish and the construction has to date been largely paid for by Federal and State Funds.

You are essentially asking whether it would be possible for the Friends of the Mattapoissett Bike Path to sponsor the Marion Connection and by assuming responsibility for the same upon the terms and conditions set forth in your letter exempt themselves from the requirements of the prevailing wage law.

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 or at the direction of a public entity"?

Here, we are dealing with the construction of a public bike path, which is a "public works". Thus, the only open question, is whether this proposed project is being undertaken "by or at the direction of a public entity". The Prevailing Wage Law 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")

The Friends of the Mattapoisett Bike Path is a nonprofit 501(c)(3) corporation organized to support the construction of the bike path. The Friends want to raise money to finance the path's expansion and the Town is looking for a determination whether prevailing wages will need to be paid for the anticipated public works construction if the project is completed without the use of any Town funds.

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 requested the work, who will control the property after completion, who will have to maintain it, and whether the project is the type typically performed by public rather than private entities.¹

In considering the circumstances of this project in their totality, DLS concludes that this construction is public and subject to the requirements of the Prevailing Wage Law. The project will be conducted on land owned by the Town of Mattapoisett, the bike path shall be constructed to the design parameters of MassDOT (and presumably is eligible for both Federal and State Grant monies), the town has been active and will remain active in the pre-design and design stages of the project, the Town's Engineer will be given the opportunity to review the final design plans and suggest changes, and the Friends are expected to invite bids from firms previously used by the Town and "suggested" by the Town Engineer. Moreover, The Town will be given the right to review bids and "advise" the friends of the suitability of bidders.

The Town, which has a population of 6,000, has formed its own bike path advisory committees, and there is some overlap between the membership of the public committees and the Friends' group. The Town has also actively directed through its publically hosted website contributions for the bike path to the Friends' nonprofit and according to your letter the Town will continue to be involved in this regard. Additionally, the funding for this project is anticipated to be from a combination of "private contributions" and "grants", which may be public money. In any event, public money is apparently available for this project but the Town feels that the project will be unduly delayed "if [they] wait for state funding."

When completed, the Marion Extension will represent an expansion of the public Mattapoisett Rail Trail and it will be managed and maintained by Town employees. Before, during and after the construction, the path will remain under the legal control of the Town. And, despite the efforts of the Friends of the Mattapoisett Bike Path to differentiate themselves from the Town, this project is being undertaken for the benefit of

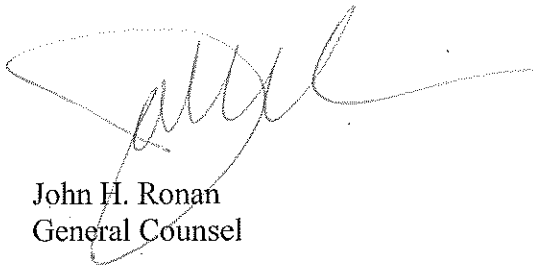
¹ Letter to Stapczynski, Town of Andover, July 23, 2007 (The prevailing wage law applies to the construction of a youth center that will be turned over to the town upon completion of the project. The ultimate goal of the project is to build a youth center that can be operated and staffed by the town for years to come.)

the Town of Mattapoisett. Considering the "totality of these circumstances", this Department concludes that the proposed bike path is being undertaken "by ... a county, town, authority or district, or by persons contracting or subcontracting for such works". Accordingly, the proposed construction must comply with M.G.L. c. 149, sec. 26 & 27, including the payment of wages at the prevailing rates.²

This decision is intended to be limited to the unique and specific facts of this proposed project. Future determinations 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,

A handwritten signature in dark ink, appearing to read "John H. Ronan", is written over the typed name and title.

John H. Ronan
General Counsel

² "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.