

## Prevailing Wage Opinion Letter 08-25-06

August 25, 2006

I am writing in response to your request for this Office's written opinion regarding the applicability of one of the Massachusetts Prevailing Wage Laws, G.L. c. 149, §27F. Specifically, you have asked if this prevailing wage law applies to a contract to move instant lottery ticket machines to various retail locations. [\[1\]](#)

As I understand it, the Massachusetts State Lottery Commission is preparing an RFR to procure moving services. The moving contractor will be responsible for moving instant ticket vending machines from a central warehouse storage facility to various retail locations throughout the state. The contractor will also remove existing machines from retail locations.

The Massachusetts Prevailing Wage Law, G.L. c. 149, §27F, requires the payment of prevailing wage to operators of trucks, vehicles or equipment engaged in public works. The term "public works" is not defined within the statute, but the court has considered the meaning of the term in two cases involving public contracts under this section of the law. In both cases, the court has given "weight to the role of boards of public works with respect to the activity in question." Perlera v. Vining Disposal Service, Inc., 47 Mass. App. Ct. 491, 495 (1999) (municipal refuse collection is "public work" within the meaning of G.L. c. 149, §27F); Commonwealth v. W. Barrington Co., Inc., 5 Mass. App. Ct. 416 (1977) (street sweeping is "public work" within the meaning of G.L. c. 149, §27F). In these cases, the court has looked to what types of activities fall within the duties and responsibilities of boards of public works to determine the scope of "public works" for the purposes of this section.

It is left to this agency to apply this reasoning to the matter before us. While the moving of these vending machines will undoubtedly involve the use of a truck or other vehicle, it is this agency's opinion that the work involved does not constitute "public work" within the meaning of G.L. c. 149, §27F. The moving of vending machines is not an activity that typically falls within the ambit of public works departments. Therefore, the prevailing wage law does not apply to this contract.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,  
Lisa C. Price  
Deputy General Counsel

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[\[1\]](#) Other prevailing wage laws governing construction and moving services are inapplicable to this contract. The vending machines are portable and are simply plugged into existing wall jacks; therefore, the placement of these machines does not constitute "construction" within the meaning of G.L. c. 149, §27D. Additionally, the prevailing wage law governing moving services, G.L. c. 149, §27G, is limited to the moving of office furniture and fixtures.