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DEPARTMENT OF LABOR  
**DIVISION OF OCCUPATIONAL SAFETY**  
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Commissioner

September 1, 2006

Daniel F. Murray  
Decas, Murray & Decas  
132 North Main Street  
Middleborough, MA 02346-0201

Dear Attorney Murray:

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §§26-27. Specifically, you have asked if the prevailing wage law applies to a private contract to paint the Middleborough Town Hall.

As I understand it, the Trustees of the Thomas S. Peirce Trust (the "Trust") would like to use trust funds to paint the Middleborough Town Hall. (The Trust was established under the will of Thomas S. Peirce around 1900 to generate funds for the benefit of the Town.) The Trustees wish to contract with a painting contractor directly to do the job, and no funds will be paid from the Town treasury for the work.

The Massachusetts prevailing wage law applies to the construction of public works by the commonwealth, or by a county, town, authority or district. G.L. c. 149, §§26, 27. While the painting of a public building is construction of public works within the meaning of the statute, in this instance, the work is not being done "by" the town. The Trust is contracting for the painting work and no public funds will be utilized for the project. Given these facts, it is this agency's determination that the prevailing wage law does not apply to this work.

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

cc: Robert J. Prezioso, Commissioner, DOS  
Kathryn B. Palmer, General Counsel, DOS  
Chris Buscaglia, Division Chief, Office of the Attorney General, Fair  
Labor & Business Practices Division