

The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

April 5, 1999

Joan Haddad
Town of Adams
8 Park Street, 3rd Floor
Adams, MA 01220

SUBJECT: Town of Adams/Westchester Modular Homes/CDBG Grant Project

Dear Ms. Haddad:

Your letter dated March 30, 1999 requesting clarification of the prevailing law has been forwarded to me for a response.

In your letter you question whether the Massachusetts prevailing wage law, as prescribed by M.G.L. c. 149, ss. 26 and 27, is applicable to certain residential construction work in the Town of Adams. According to your correspondence, my understanding of the facts are as follows:

1. The Town of Adams, in conjunction with the Massachusetts Department of Housing and Community and Development, is funding the construction of two duplex residential buildings.
2. According to your correspondence, funding for the construction of the residential units will be provided by the Town of Adams and from the U.S. Department of Housing and Urban Development by way of a Community Development Block Grant.
3. The Town of Adams has entered into an agreement with the North County Community Development Corporation, a private, non-profit corporation, to construct the residential units on land currently owned by the same. Once complete, the residential units will be sold to low/moderate income people.

In accordance with M.G.L. c. 149, s. 26, the Division of Occupational Safety sets the hourly wage rates that must be paid to "mechanics and apprentices, chauffeurs and laborers" employed "in the construction of public works." While it is indisputable that any contractor hired to construct the residential units will employ "mechanics and apprentices, chauffeurs and laborers," the only issue in this case is whether such individuals are engaging "in the construction of public works."

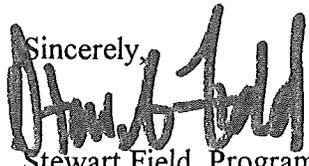
Section 27D of the above-referenced law defines public works "construction" and, consequently, confines the applicability of prevailing wage requirements to construction, additions and alterations of public buildings and public works. In this case, the residential units in question are private and will remain as such. The only reference to the prevailing wage law applying to work conducted on private property is contained later in the same section where demolition of *any* structure, typically a condemned building, is ordered by a public authority to preserve the public health. This is not the case here.

Given the facts provided in your correspondence, construction of the residential units cannot be construed as "public works construction" for the purpose of the prevailing wage law. Therefore, the provisions of M.G.L. c. 149, ss. 26 and 27, the prevailing wage law, will not apply to this project.

This determination is based on the facts contained in your March 30th correspondence and is confined to this particular situation. If additional facts concerning the work in question come to your attention, please notify me immediately so that I may consider such information in a reassessment of this decision.

For clarification of the public bidding statutes (M.G.L. c. 30, s. 39M and M.G.L. c. 149, ss. 44A-44J), please contact the Attorney General's Fair Labor and Business Practices Division at (617) 727-3476. Also, for information regarding U.S. Davis-Bacon Act (40 U.S.C. 276a-276a7), please contact the Boston office of the U.S. Department of Labor at (617) 424-4925

If you have any further questions concerning this matter, do not hesitate to call me.

Sincerely,

Stewart Field, Program Manager
Mass. Div. of Occupational Safety

cc: Robert Prezioso, Deputy Director
Mass. Div. of Occupational Safety

Linda Hamel, General Counsel
Mass. Div. of Occupational Safety

Barbara Piselli, Division Chief
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