

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

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

May 22, 1998

Candace Wheeler, Town Administrator
Town of Hamilton
P.O. Box 429
Hamilton, MA 01936

SUBJECT: Town of Hamilton/Development of Town-Owned Land

Dear Ms. Wheeler:

I have reviewed your fax dated May 15, 1998 concerning whether the Massachusetts prevailing wage law, as prescribed by M.G.L. c. 149, ss. 26 through 27D, is applicable to certain construction-related work on property which the Town of Hamilton (Hamilton) intends to sell to a private developer. According to your fax and our subsequent telephone conversation, my understanding of the facts are as follows:

1. Hamilton, through an RFR process, will sell a parcel of town-owned land to a private developer. The developer will retain title to the property and redevelop the site for private pursuits, namely construction of a new commercial building.
2. Under the terms of the proposed RFR, construction-related work can be divided into two distinct categories: 1) work performed by the developer for his/her exclusive private benefit, and 2) redevelopment of a small parcel of town-owned land over which Hamilton has granted an easement for the installation of a septic system for the newly constructed commercial facility.
3. Work performed on the town-owned property by the selected developer will include restoration of a public parking area, including installation of new sidewalks and related work.

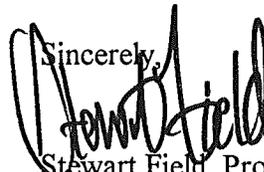
M.G.L. c. 149, s. 26 requires the Director of the Department of Labor and Workforce Development to set hourly wage rates which must be paid to "mechanics and apprentices, chauffeurs and laborers" who are employed in the construction of "public works." It is indisputable that the RFR process chosen by Hamilton will result in construction of a new commercial building and minor improvements to town-owned property where "mechanics and apprentices, chauffeurs and laborers" will be employed by the selected developer. Since the

commercial facility will be constructed for private concerns and gain, it cannot be considered construction of "public works." Therefore, the only issue is whether the improvements to the parking area owned by Hamilton can be considered construction of "public works."

Section 27D of the above-referenced law defines public works construction and, consequently, defines the applicability of prevailing wage requirements as pertaining to construction, additions and alterations of public buildings and public works. In this case, the parking area is and will remain the property of Hamilton. That fact compels the conclusion that the parking area is a "public work", and any improvements to such is public works "construction." Consequently, all work associated with the improvements to the publically owned parking area is subject to the prevailing wage law.

This determination is based on the facts contained in your May 15th fax, our subsequent conversation 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 reassess this decision.

If you have any 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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