

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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December 17, 2007

Wendell Phillips
Compliance Officer
Northern California Electrical Construction Industry
6250 Village Parkway, 2nd Floor
Dublin, CA 94568

R E C E I V E D
Department of Industrial Relations

JAN 7 2008

Div. of Labor Statistics & Research
Chief's Office

Re: Public Works Case No. 2007-018
Zoo Improvements
City of Merced

Dear Mr. Phillips:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the construction of the Ed-Zoo-Cation Center at the Applegate Park Zoo ("Project") is a public work; however, City of Merced's ("City") chartered city status exempts it from the requirement to pay prevailing wages.

Facts

City operates a small (approximately one acre) zoo within Applegate Park, a City park contained entirely within City limits. The Zoo is not accredited by the American Zoo and Aquarium Association, and has only a Class C Exhibitor's license. The lack of accreditation severely limits the Zoo's ability to receive animals on loan from accredited zoos and renders the Zoo ineligible for federal and state funding such as grants. The Zoo essentially acts as a rescue facility for injured and non-releasable wild animals.

City contracts with the Merced Zoological Society ("Society"), a private nonprofit organization formed to assist City with the Zoo. Society collects the Zoo's entry fee on behalf of City, operates the gift shop and conducts various fundraisers. Funds raised by Society are donated to City and cover one-third of the Zoo's operating expenses, with the other two-thirds coming from City's general fund.

The Project consists of the construction of a 30 by 60 foot metal building with a 15 by 60 foot covered patio, including all mechanical, electrical and plumbing work, as well as some site work and concrete walks. The work is to be performed under a construction contract between City and Brett Briggs Construction. The building will serve as a multi-purpose facility that local residents may use for meetings, educational activities (including those related to nature and wildlife), birthday parties for children and other local community needs. It is not to be used for housing animals, nor is it intended for exclusive use by the Zoo. City originally intended to fund the Project entirely from the Rossotti Fund, a City fund established with a substantial bequest from Aleta Rossotti, a local schoolteacher who had been a long-time volunteer at the Zoo. Because bids for the Project were significantly higher than City had estimated, additional funding is to be

provided from City's Park Reserve Fund.¹ The primary purpose for the use of all funds for the Zoo generally and for the Project in particular is to benefit the residents of Merced.

City is a chartered city. Its charter, effective in 1949, contains a "home rule" provision (at section 200) stating that City retains control over its municipal affairs.

Discussion

Labor Code section 1720(a)(1)² provides, in pertinent part, that: "'public works' means: ... Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds"

The scope of work for the Project entails construction. The work is to be performed under a construction contract between City and Brett Briggs Construction and paid for out of public funds as discussed above. Therefore, the Project is a public work within the meaning of section 1720(a)(1).

City asserts, however, that its chartered city status exempts it from the Labor Code's prevailing wage requirements. Where a public works project is completely within the realm of the chartered city's "municipal affairs," it is exempt from California's prevailing wage laws. *City of Pasadena v. Charleville* (1932) 215 Cal. 384 [disapproved on other grounds by *Purdy and Fitzpatrick v. State* (1969) 71 Cal.2d 566]. "Municipal affairs are matters which affect the local citizens rather than the people of the State generally." 66 Ops.Cal.Atty.Gen. 266, 271-272.

Three factors are considered in determining whether a public works project is a municipal affair of a chartered city: (1) the extent of extra-municipal control over the project; (2) the source and control of the funds used to finance the project; and (3) the nature and purpose of the project. *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115. Related to the nature and purpose of the project are its geographical scope (*Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 516-517) and its extra-territorial effects (*Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2d 766, 771-774).

Regarding the first factor, City conceived, planned and executed the Project, and the Project is not subject to extra-municipal control. Regarding the second factor, only municipal funds are being used to finance the Project, and only City controls how these funds are spent. Regarding the third factor, the Project's purpose is to provide a facility for the educational and recreational use of the residents of Merced. The work is to be performed within a municipal park located entirely within City limits, and the Project has no extra-territorial effects. As such, the nature and purpose of the Project is municipal. "A charter city has inherent authority to control, govern and supervise its own parks. The disposition and use of park lands is a municipal affair" *Simons*

¹The Park Reserve Fund is funded primarily by developer fees imposed pursuant to Merced Municipal Code, Chapter 18.40 et seq. It also contains revenue from interest income, state grant money earmarked for specific projects other than this Project, and Public Facility Impact Fees collected by City upon issuance of building permits for development within City.

²All statutory references herein are to the Labor Code, unless otherwise specified.

v. City of Los Angeles (1976) 63 Cal.App.3d 455, 468, quoting *Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 689 (internal quotation marks and citations omitted). Because of the municipal nature of the funding sources for the Project, the municipal nature and purpose of the Project and municipal control of the Project, the holding in *Simons* would appear to apply to the facts of this case. Accordingly, the Project is a municipal affair under the home rule provision of City's charter.

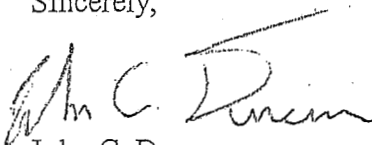
Requesting party, the Northern California Electrical Construction Industry Labor-Management Cooperative Trust ("Cooperative Trust") contends that the Zoo is regionally funded and therefore not solely a municipal affair since admission fees, gift shop receipts and Society member dues may come from individuals who do not reside in City. This contention must be rejected for two reasons. First, the Project is not being funded by the sources identified by Cooperative Trust. Rather, the Project is being funded by City's Rossotti Fund and Park Reserve Fund. Second, even if private revenues collected by Society were used to fund the Project, once such revenues are transferred to City, they become City funds, irrespective of whether a portion of them can be traced to non-resident Zoo patrons.³

Cooperative Trust also contends that the Project is not solely a municipal affair because some of the animals exhibited at the Zoo are provided by the State of California. The habitation of these animals at the Zoo does not create extraterritorial effects nor does it otherwise negate the municipal nature and purpose of the Project, which is to provide a multi-purpose room for birthday parties and meetings within a local zoo, which is located within a municipal park.

For the foregoing reasons, under the facts of this case, the Project is a public work but City's chartered city status exempts it from California's prevailing wage laws.

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,



John C. Duncan
Director

³Similarly, Cooperative Trust contends that the Project is not solely a municipal affair because a representative of the Merced Chamber of Commerce allegedly suggested that visitors from outside City might wish to visit the Zoo. Hearsay statements attributed to a private organization are not material to the question of whether the Project is a purely municipal affair. Moreover, even if the Zoo is visited by some non-residents, the information in the record establishes that the Zoo is a local attraction within a municipal park. It is not a regional tourist attraction any more than any other city park that is occasionally visited by non-residents.