

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
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March 7, 2002

Thomas W. Kovacich, Esq.  
Atkinson, Andelson, Loya, Ruud and Romo  
17871 Park Plaza Drive, Suite 200  
Cerritos, CA 90703-8597

Re: Public Works Case No. 2001-061  
City Street Sweeping

Dear Mr. Kovacich:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced work under California's prevailing wage laws and is made pursuant to title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this matter and an analysis of the applicable law, it is my determination that the city street sweeping described in the City of Santee Agreement for Street Sweeping Services as well as the scope of the services described in your request for a coverage determination are "public works" subject to the payment of prevailing wages.

On November 7, 2001, you wrote to this Department requesting a formal public works coverage determination for city street sweeping work. You attached an example of an agreement between the City of Santee and a street maintenance contractor for such services. You summarize the work as "furnishing all labor, machinery, equipment, tools, water and supplies necessary to perform and complete street sweeping services on streets, intersections and parking lots."

You state that the intent of the services is to maintain the cleanliness of the air and water to meet environmental requirements and that the city street sweeping described in the sample agreement is a completely different process from the mechanical broom sweepers that work on construction sites to pick up debris on a conveyor belt. You also argue that street sweeping work falls under the custodial and/or janitorial exception to the definition of maintenance. You cite determinations by prior Department Directors and letters from the former Chief of the Division of Labor Statistics and Research ("DLSR"), Dorothy Vuksich, which held that similar work was not maintenance and therefore not covered under the prevailing wage laws.

Letter to Thomas w. Kovacich, Esq.  
Re: Public Works Case No. 2001-061  
March 7, 2002  
Page 2

Labor Code section 1771 states in relevant part: "Except for public works projects of one thousand dollars (\$1,000) or less...not less than the general prevailing rate of per diem wages...shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work."

Maintenance is defined, in relevant part, in title 8, California Code of Regulations, section 16000, as:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired. ...

EXCEPTION 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

...  
\*  
A city street system is a publicly owned facility within the meaning of the regulation because it is real property dedicated to public, business and governmental use by motorized and non-motorized conveyances for personal and commercial travel and transport. Street sweeping is both safety and use connected. The work of keeping the city's streets clean is not purely aesthetic; street sweeping keeps the public streets in a "[s]afe and continually usable condition for which the [city's streets have] been designed, improved, constructed altered or repaired." Thus, the cleanliness of the streets is a necessary function of keeping them in a safe and continually usable condition, which is essential for the functioning of the city's thoroughfares in the manner for which they have been designed, constructed, altered and repaired.

The above regulation excludes janitorial or custodial services of a routine, recurring or usual nature. The standard definition of "janitor" is "one who attends to the maintenance or cleaning of a building." "Custodian" is defined as "janitor." The American Heritage Dictionary, (2d College Ed. 1982). "Janitorial" and "custodial" work that is routine, recurring or usual can therefore practically be defined as individual labor-intensive work devoted to the maintenance or cleaning of a structure.

Letter to Thomas w. Kovacich, Esq.  
Re: Public Works Case No. 2001-061  
March 7, 2002  
Page 3

By contrast, city streets and highways are infrastructure, which is much broader than a single structure or facility. "Infrastructure" is defined as, "[T]he basic facilities, equipment and installations needed for the functioning of a system or organization." Id. The city streets, highways and parking lots are basic facilities and installations needed for the functioning of a city's transportation system.

The workers in issue here will perform street sweeping services using machinery, equipment and other tools and supplies on the city's streets, highways and parking lots. The work, therefore, is not janitorial or custodial in nature but maintenance subject to the payment of prevailing wages.

In response to your request regarding the Department's determination that street sweeping is maintenance, under Government Code section 11425.60 a decision may not be expressly relied on as precedent unless it is designated as a precedential decision by the Department. As Director of Industrial Relations, it is my responsibility to make such determinations and decide what determinations will be precedential. Public hearings and public comment periods are not required before the Director issues coverage determinations. Winzler & Kelly v. DIR (1981) 121 Cal.App3d 120, 174, Cal. Rptr. 744.

Pursuant to Government Code section 11425.60, beginning in 1999, I undertook a review of all prior coverage determinations and designated several as precedential.<sup>1</sup> I specifically did not designate as precedential all of the decisions you cite in your letter in support of your position. Therefore they may not be cited as precedential decisions of this Department in coverage determinations. Further, the letters of the former Chief of DLSR do not constitute public works coverage determinations, which may only be issued by the Director of the Department.

Consistent with Precedential Public Works Determination No. 2000-021, City of Santee/California Street Maintenance - Street Sweeping (August 11, 2000), it is my opinion that the city street sweeping work for which you have requested a determination is maintenance as that term is defined by section 16000, and it is not subject to the janitorial/custodial exception contained within that regulation.

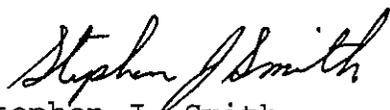
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<sup>1</sup> Notice of the existence of an index of precedential decisions is published, as required, in the California Regulatory Notice Register. The Department's precedential public works determinations and decisions on appeal can be found on the web site of the Division of Labor Statistics and Research, [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html).

Letter to Thomas w. Kovacich, Esq.  
Re: Public Works Case No. 2001-061  
March 7, 2002  
Page 4

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith". The signature is written in dark ink and is positioned above the typed name.

Stephen J. Smith  
Director