

## DEPARTMENT OF INDUSTRIAL RELATIONS

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April 7, 2003

Patricia E. Beck  
Principal Assistant County Counsel  
El Dorado County Office of the County Counsel  
County Government Center  
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Placerville, CA 95667

**RECEIVED**  
Department of Industrial Relations

APR 15 2003

Re: Public Works Case No. 2002-037  
Hauling of Paving Materials  
County of El Dorado

Div. of Labor Statistics & Research  
Chief's Office

Dear Ms. Beck:

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 Title 8, California Code of Regulations, 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 hauling of paving materials by Blaine Stumpf Trucking ("Contractor") from material suppliers to either public work sites operated by County's own personnel, or force account, or to County of El Dorado ("County") storage sites is not public work subject to payment of prevailing wages.

On April 25<sup>th</sup>, County entered into a contract with Contractor to transport County-purchased road materials from material suppliers to either County force account public work sites or a County storage site.

With regard to the deliveries to the public work sites, the truck drivers for Contractor pick up the materials from the supplier's plant then drive to road maintenance job sites. Upon arrival, the truck drivers, as directed by County personnel, dump their load of paving materials into the hopper of a County paving machine. The drivers stay in their trucks during the dumping of the materials, using controls from inside the cab, and are not involved in operation of the paving machine. Once the materials have been dumped into the hopper, the truck drivers leave the public work site. The operation of the paving machine, including the heating of the materials and eventual spreading of the materials onto the road, is performed solely by County force account workers.

In the second instance, the facts are substantially the same except that the trucker hauls material from the supplier to a designated County stockpile for later use by force account employees. Therefore, the materials are not immediately incorporated into any job site. County does not dispute that the force account work of repairing and paving the roads is a public work. The question is whether the hauling of the materials by Contractor's employees to each type of site is public work.

To determine whether the hauling of the paving materials in this case to either the County storage site or directly to a County public work site constitutes public work depends on whether Contractor falls within the material supplier exclusion from prevailing wage requirements set forth in the case of *O.G. Sansone Co. v. Department of Transportation* (1976) 55 Cal.App.3d 434.

Under *Sansone*, the following criteria must be met to come within the exclusion: (1) the materials must come from a supplier who is in the business of selling supplies to the general public; (2) the plant where the supplies are purchased must not be established specially for the particular contract; (3) the materials supply plant must not be located at the site of the work; and (4) the delivery of the materials must not be an integrated aspect of and functionally related to the public work, i.e., the materials hauled are not immediately incorporated with no re-handling of the materials during the flow of the construction. *Alameda Corridor Project/AA Ready Mix Concrete and Robertson's Ready Mix Concrete*, PW 99-037 (April 10, 2000); *Caltrans I-5 Repair*, PW 2000-075 (August 15, 2001).

With regard to both delivery scenarios, County advises that the paving materials are indeed purchased from suppliers who are in the business of selling similar supplies to the general public, who operate plants not established specially for the contract with County and who have not set up a plant at the public works site. It is, therefore, the fourth factor in the *Sansone* formulation that must be analyzed to determine whether prevailing wages must be paid to the truckers in this case.

Concerning the delivery to a temporary storage site, such delivery is not an integrated aspect of nor functionally related to a public work because it is not connected to a construction site. Because the materials are stock-piled for storage, they are re-handled and therefore not immediately incorporated into the road construction. For these reasons, this particular hauling work is excluded as public work under *Sansone*.

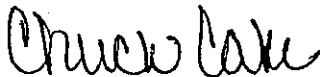
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Concerning the delivery of the materials to the road maintenance public work sites, the truckers only dump the material into a hopper with no other involvement on the job site. It is the County personnel who re-handle the material by manipulating and operating the paving machine. For these reasons, the delivery of the paving material is not functionally related to the public work and therefore is excluded from public work coverage under *Sansone*.

In summary, under the limited circumstances described above and consistent with Department precedent and the *Sansone* decision, neither delivery scenario described in this determination constitute public work for which prevailing wages are required.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director