

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2002-090

DOUBLETREE HOTEL DEVELOPMENT PROJECT

CITY OF ANAHEIM

On May 13, 2003, the Director of Industrial Relations issued a public works coverage determination ("Determination") finding that the Doubletree Hotel Development Project ("Project") is not a public work subject to prevailing wage obligations. The basis of the Determination is that the City of Anaheim's ("City") financial assistance to Orangewood LLC and Orangewood Hotel Corporation ("Developer") is in the form of a market-rate interest loan and excluded from the definition of "public funds" under Labor Code section 1720(b) and 8 CCR section 16000.

On June 13, 2003, the requesting party, Southern California Labor/Management Operating Engineers Contract Compliance Committee ("Operating Engineers") timely filed an

administrative appeal of the Determination. Both Developer and Operating Engineers briefed the issues on appeal.¹

Having fully considered the record and arguments on appeal, the undersigned hereby denies the appeal for the reasons set forth in the Determination, which is fully incorporated by reference herein, and for the additional reasons discussed in this Decision on Appeal.

DISCUSSION

In 8 CCR section 16000 ("Regulation") it is stated that "public funds do not include money loaned to a private entity where work is to be performed under private contract, and where no portion of the work is supervised, owned, utilized, or managed by the awarding body." The principal argument presented on appeal² is that City retained sufficient control over the Project such that City must be deemed to have supervised the work, thereby converting City's loan to Developer into "public funds" under the Regulation.

It is true that City's loan to Developer was made conditional upon City's right to grant or withhold approval of certain aspects of the Project. These conditions on the loan, however, were aimed at assuring that the overall

¹ The Director received Operating Engineers' letter brief on June 13, 2003 in conjunction with the appeal, and Developer's letter brief was received July 14, 2003.

² Operating Engineers have not provided new evidence in support of their appeal, nor do they dispute the facts already in the record. The only issues raised here are legal ones.

quality of the finished Project would meet "the standards of a three-star-plus hotel"³ consistent with City's "long term goals and plans" for City's convention and resort area.⁴ The word "work" in the above-referenced Regulation refers to the construction work. There is no evidence that City may exercise any authority to supervise Developer's construction contractors or the construction work to be performed on the Project. Similarly, there is no evidence that the City will be supervising the Project in its finished form.

As Developer points out, the Project itself serves as security for the loan pursuant to the Deed of Trust between City and Developer. Consequently, the conditions of the loan serve to assure that the value of the Project is adequate to secure repayment of the loan in the event of a default by Developer. The nature of this security interest cannot be characterized as a *quid pro quo*, as Operating Engineers argue.

The Determination also contained a finding that the public easement over the Project will not constitute an ownership interest retained by City. Operating Engineers argue that the City will be "utilizing" the easement, even if such an easement does not rise to the level of an estate in property.

³ See paragraph D of the Recitals set forth in the Development and Economic Assistance Agreement ("Agreement").

⁴ See paragraph F of the Recitals in the Agreement.

The sole purpose of the easement is to assure that the finished Project will not obstruct public access to the adjacent Convention Center. Although City undoubtedly wants convenient and easy access to its Convention Center, there is no evidence that the easement here will be the only, or even the primary, means of access to the Convention Center. More important, the easement is for use by the public, not by City as an entity. The Regulation at issue here speaks in terms of work that is "supervised, owned, utilized, or managed." These terms clearly imply an active role for an awarding body that loans money to a private entity. The public access easement here does not satisfy that criteria.

CONCLUSION

For the reasons set forth herein and in the initial coverage Determination, the appeal is denied and the Determination upheld. This decision constitutes the final administrative action in this matter.

Dated: 8-19-03

Chuck Cake
Chuck Cake, Acting Director