

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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December 14, 2006

Shawn Smith, Field Representative
Local Union No. 1109
United Brotherhood of Carpenters & Joiners of America
319 North Church
Visalia, CA 93291

Re: Public Works Case No. 2006-016
New Public Library
City of Lindsay

Dear Mr. Smith:

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 new public library ("Project") is a public work, but that the City of Lindsay's ("City") status as a chartered city exempts it from the requirement to pay prevailing wages.

City is a chartered city. Section 8:11.K of its present charter allows the City Council to adopt its own regulations concerning bidding and wage requirements that are otherwise consistent with the charter. Section 3.04.210 of City's Municipal Code states that there shall be no provision for state prevailing wage rates unless required by grant or other funding mechanisms.

City issued an Invitation to Bid on construction of a new public library to be located at the southwest corner of Samoa Street and Mirage Avenue in the downtown area, budgeted at \$1.25 million. Section 13 of the Invitation to Bid recites that the Project is a matter of local concern, wholly funded from local revenues, and therefore exempt from prevailing wage rates. Information provided by City indicates that the Project entails expenditures only from City's General Fund. Although it had requested financial assistance from the United States Department of Agriculture ("USDA"), City represents that the Project is receiving no funding from that source.

A "public work" is defined by Labor Code section 1720(a)(1)¹ as: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds" The Project clearly entails construction done under contract and paid for out of public funds, and therefore is a public work as defined by statute.

City asserts, however, that its chartered city status exempts it from the payment of prevailing wages on the Project. Under article XI, section 5 of the California Constitution, a chartered city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." Where a public works project is completely within the realm of

¹All statutory references herein are to the Labor Code unless otherwise indicated.

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the chartered city's "municipal affairs," then it is exempted 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].

Three factors are considered in determining whether a public works project is a municipal affair of a chartered city or a matter of statewide concern: (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. *So. Cal. 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, here as in PW 2005-012, *Sewer and Storm Lift Station Upgrade Project, City of Visalia, Goshen Community Services District* (August 8, 2006), City is the awarding body. It planned and executed the Project, determined the scope of work and awarded the contract. It thus exercises complete control over the Project. Therefore, this factor is consistent with City's chartered city exemption.

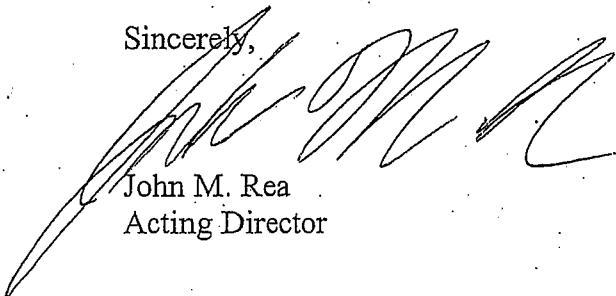
Regarding the second factor, the source of all funds for the Project is City's own General Fund, which, by definition, is under the control of City. Accordingly, this factor is also consistent with City's chartered city exemption.²

Regarding the third factor, the library site is in City's downtown, entirely within City limits. The library will benefit City residents and perhaps others who work in City, but there is no evidence that it will have extraterritorial effects. Thus, the nature and purpose of the Project are municipal, and the third and final factor is consistent with City's chartered city exemption.

For the foregoing reasons, the Project is construction, performed under contract and paid for with public funds; therefore, it is a public work within the meaning of section 1720(a)(1). However, under the facts of this case, the Project is a purely municipal affair and City's chartered city status exempts the Project from the application of California's prevailing wage laws.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director

²If City had in fact received financial assistance from USDA, this would not be so, and the result might well be different.