



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

September 21, 2009

[REDACTED]

Re: [REDACTED] Library
Our File No. RO-09-0077

Dear [REDACTED]:

Your letter dated May 18, 2009, asks our opinion as to whether the prevailing wage law would apply to certain library maintenance and rehabilitation work (solar panels and window replacements) on a project being performed by the [REDACTED] (Library). We are told that the form of your Library is that of an Association Library.

Two issues exist in reaching a determination on applicability of the prevailing wage law. The first is whether the Library itself is a "public library" subject to the prevailing wage law. Libraries are of two varieties: "public libraries," established for public purposes by official action of a municipality (which include school libraries) and "association" libraries, established and controlled by a group of private individuals as an association, amongst other indicia. See Education Law Section 253(2). Association libraries could be "free" libraries open to the community.

We have previously determined that even when a school district or other municipality contracts with a free association library to provide services to its residents, such a contract does not change the private character of the library, or otherwise affect its obligations in regard to the payment of prevailing wages. See attached Opinion from Department of Labor Counsel regarding the [REDACTED] Library, dated June 8, 1998. Also instructive in this regard is the case cited therein, *French v. Board of Education of Three Village Central School District*, 99 Misc. 2d 882, regarding the applicability of Section 101 of the General Municipal Law to free association libraries.

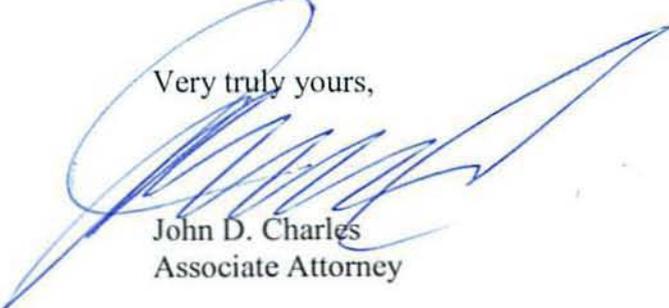
The second issue is whether work that is performed by the Library on real property owned and operated by the Town would be subject to the prevailing wage law. While construction work performed on a "free association" library building in private ownership would not be subject to the prevailing wage law, such construction is subject to the prevailing wage law when the work is performed on real property owned by a municipal entity. This usually occurs

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when a free association library is housed in a municipal facility. So the answer to the question as to the applicability of the prevailing wage law revolves around the ownership of the library building in question. If the library building is in private ownership, the prevailing wage law currently would not apply to any project. If the library building is owned by a municipality, then the prevailing wage law would be applicable, assuming the project meets the two prong test set forth by the courts.

Your letter did not include any information in regard to the ownership of the building in question. Hopefully, this letter will serve to provide your answer regardless of ownership. I trust that this is responsive to your inquiry. Please let us know if you need any further clarification on this issue.

Very truly yours,



John D. Charles
Associate Attorney

Enclosure

cc: Chris Alund
Dave Bouchard
Fred Kelley
Opinion File