

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director

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December 22, 2015

Rob Carrion
District Representative
Operating Engineers Local Union No. 3
3920 Lennane Drive
Sacramento, CA 95834

Re: Public Works Case No. 2014-028
2014 Paving and Drainage Project
Town of Truckee

Dear Mr. Carrion:

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 Labor Code¹ section 1773.5 and 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 Town of Truckee's (Truckee) roadway paving and drainage construction project (Project) is a public work; however, Truckee's chartered city status exempts it from the requirement to pay prevailing wages.

FACTS

In August 2014, Truckee contracted with Advanced Companies, Inc. doing business as Advanced Asphalt, to carry out roadway paving and the construction of drainage improvements at various locations within the geographic boundaries of Truckee. The low bid was for \$1,844,362.40, and Truckee budgeted over \$2 million to cover unforeseen conditions and additional costs. The Project was completed in January 2015.

Funding for the Project was from two sources. One source was a .5 percent (one-half cent) sales tax collected by Truckee as authorized by Measure V. Measure V was approved by Truckee's own residents in the Municipal Election on November 4, 2008. The purpose of the tax is "to continue funding for paving, repairing and improving our Town's roads to enhance roadway safety for drivers, bicyclists and pedestrians including related upgrades to drainage to protect local water quality" and further specified that all money collected is to be spent on Truckee roadways.

The other source of funding for the Project was money collected from an annual parcel charge assessed on property located in Truckee's Special Services Area 1 (TSSA 1). TSSA 1 encompasses the Tahoe Donner residential subdivision within the geographic boundaries of Truckee. In 2014,

¹ All citations are to the California Labor Code, unless otherwise specified.

the annual assessment for property within TSSA 1 was \$95.00 per improved lot and \$70.00 per unimproved lot. The actual collection and assessment of the parcel charges within TSSA 1 is done by Nevada County. In authorizing the Project, Truckee adopted the recommendation of Truckee's Senior Engineer that TSSA 1 funds collected in 2014 be allocated to roadway and drainage construction activities within TSSA 1.²

Truckee is a chartered city. Its charter, adopted in 1995, contains a "home rule" provision in Article 1, stating that Truckee's governance is a municipal affair for the benefit of Truckee's citizens. Article 2 reserves to Truckee all power and control over public works contracts and the compensation to be paid for the performance of the work. Article 4 asserts that the provisions of the charter will prevail in the event of a conflict with the general laws of the State of California. Chapter 3.13.010 of Truckee's Municipal Code directs its Public Works Director to establish wages to be paid on locally funded public works projects. Through Resolution 2009-18, Truckee's Town Council declared public works projects financed with local funds to be of local municipal concern, and established Truckee's own base hourly wage rates for operating engineers, teamsters, and laborers. Truckee also determined that workers in other crafts are to be paid 83 percent of the prevailing wage rate for Nevada County as determined by the Department of Industrial Relations. Fringe benefits are to be negotiated between contractors and their employees.

DISCUSSION

Labor Code section 1771 generally requires the payment of prevailing wages to workers employed on public works. Section 1720, subdivision (a)(1) defines "public works" as "[c]onstruction, alteration, demolition, installation, or repair work done under contract, and paid for in whole or in part out of public funds"

There is no dispute that the Project involves construction done under contract and paid for in whole or in part out of public funds. Truckee asserts, however, that its charter exempts it from complying with California's prevailing wage laws, section 1720 et seq. (CPWL), specifically the payment of prevailing wages, because the Project is purely a municipal affair.

The California Constitution explicitly authorizes charter cities to govern themselves, free from intrusion of the state legislature, regarding matters deemed municipal affairs. (*State Bldg. and Constr. Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555 (*City of Vista*); Cal. Const. Art. XI, section 5.) Charter cities "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." (Cal. Const. Art. XI, section 5(a).) "City charters adopted pursuant to this Constitution shall...with respect to municipal affairs...supersede all laws inconsistent therewith." (*Id.*) As to matters which are of statewide concern, charter cities remain subject to and controlled by general state laws regardless of the conflicting provisions of their charters. (*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61-62.)

The California Supreme Court recently reiterated the four-part analytical framework for resolving whether a matter falls within the home rule authority of a charter city:

² Road maintenance has been an authorized use of TSSA 1 funds since 1985.

First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a “municipal affair.” Second, the court must satisfy itself that the case presents an actual conflict between [local and state law]. Third, the court must decide whether the state law addresses a matter of “statewide concern”. Finally, the court must determine whether the law is “reasonably related to... resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance.

(*City of Vista, supra*, 54 Cal.4th at p. 556 [internal quotation marks and case citations omitted].) The Court in *City of Vista* held that the “wage levels of contractor workers constructing locally funded public works are a municipal affair, and that these wage levels are not a statewide concern.” (*Id.*, at pp. 556, 566.) The analysis of the coverage question for this Project must begin with the first *City of Vista* factor.

Although the California Constitution grants charter cities the ability to regulate their own municipal affairs, the California Constitution does not provide a definition of what constitutes a municipal affair. As a result, “courts must decide, under the facts of each case, whether the subject matter under discussion is of municipal or statewide concern.” (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 292.)

In *Southern California Roads Co. v. McGuire (McGuire)*,³ the California Supreme Court considered the following factors in determining whether a project is a municipal affair or a matter of statewide concern: (1) the extent of the non-municipal control over the project; (2) the source and control of the funds used for the project; and (3) the nature and purpose of the project, including its geographical scope and extraterritorial effects.

Regarding the first factor, Truckee planned and designed the Project, advertised for bids and awarded the contract. Truckee provided the plans and specifications and was responsible for inspecting and supervising the construction.

With respect to the second factor, the Project is funded by two sources, the Measure V sales tax revenue and charges assessed on real property located within TSSA 1. The Measure V funding is directly analogous to the funding considered by the Court in *City of Vista*: a voter-approved .5 percent sales tax to fund the construction of public buildings. In *City of Vista*, the Court determined that such funding was local in nature. There is no factual basis to distinguish Truckee’s Measure V funding in this case. The TSSA 1 funding is derived from charges levied against property within Truckee. The monies thus collected are allocated by Truckee’s Town Council exclusively to roadway and drainage improvement within the service area covered by TSSA 1. Property owners within the service area who pay the assessments are those who benefit directly from the Project. No non-municipal funds from any source were used to finance the Project. The source and control of all funding for the Project were municipal in nature.⁴

³ (1934) 2 Cal.2d 115, 120-23.

⁴ With respect to the TSSA 1 funding, this conclusion is consistent with PW 2000-074, *Lopez Ridge Neighborhood Park Project* (May 16, 2001). In that case, assessments levied in conjunction with the issuance of building permits within a public facilities benefit assessment district within the City of San Diego were used to fund the building of a neighborhood park. Those revenues were deemed to be municipal in character under *McGuire*.

Regarding the third factor, the primary goal of the Project was to widen, improve and maintain certain local roads. At the same time, and under the same contract, drainage facilities were built or repaired at various locations. All of the construction was performed entirely within the geographic limits of Truckee and served a municipal purpose to preserve the quality of the Truckee's roads and prevent damage from the flow of storm water within it. . Therefore, the third *McGuire* factor supports the conclusion that the Project was purely a municipal affair undertaken by Truckee.⁵

Returning to the analytical factors set out in the *City of Vista*, the Truckee's charter, Municipal Code, and Resolution 2009-18 present an actual conflict between local law and the CPWL. The CPWL does not exempt charter cities from its reach, while the Truckee's Town Council has asserted that compliance with the CPWL is not required for local public works projects financed with locally-sourced funds.

In *City of Vista*, the Court explicitly decided that the CPWL is not a matter of statewide concern. Accordingly an analysis of the third and fourth *City of Vista* factors is unnecessary here.⁶

For the foregoing reasons, under the facts of this case, the Project is a public work but Truckee's chartered city status exempts the Project from California's prevailing wage laws.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Christine Baker
Director

⁵ Cf. PW 2000-064, *City of Porterville Road Repair Project/Tulare County Road Annexation* (August 27, 2001) [Construction, repair, and maintenance of City-owned streets taken over from the County determined to constitute a municipal affair.]

⁶ The third factor is whether the state law addresses a matter of statewide concern; the fourth factor is whether the state law is reasonably related to resolution of that concern and narrowly tailored to avoid interference with local governance. *City of Vista*, supra, 54 Cal.4th at p. 556.