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SPRINGFIELD

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LABOR:
Applicability of Prevailing
Wage Law to Repair of Private
Homes Under Community Develop-
ment Program

COPY

Mr. William M. Bowling
Director
Department of Labor
Stratton Office Building
Springfield, Illinois 62706

Dear Mr. Bowling:

In a recent letter you asked about the rate of wages to be paid by contractors in the City of DeKalb's residential rehabilitation program, using funds from the Federal Community Development Block Grant Program. In DeKalb's program, private homeowners meeting a standard of need make individual agreements with private contractors for the repair or improvement of their homes so as to bring them up to housing code standards.

If the city approves such an agreement the work goes forward and the city pays for it with the Federally-provided funds. You particularly ask about the application to this work of "AN ACT regulating wages of laborers, mechanics, and other workmen employed in any public works, etc." (Ill. Rev. Stat. 1975, ch. 48, par. 39s-1 et seq.), commonly known as the Prevailing Wage Act.

In my opinion this Act does not require wages at the "prevailing" rate in the DeKalb program. It might be noted initially that Federal law does not require "prevailing" wages in this particular program. Section 109 of Title I of the Housing and Commuinty Development Act of 1974, 42 U.S.C. §5310 (Supp. 1975), under which the funds are provided, states that:

> "All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended: Provided, That this section shall apply to the rehabilitation of residential property only if such property is designed for residential use for eight or more families. * * *"

The work done in DeKalb's program certainly is "rehabilitation of residential property". The proviso just quoted limits the application of the section's prevailing-wage requirement for such residential property to work on buildings designed for residential use of eight or more families. Thus the work on individual homes in DeKalb does not come within the Federal prevailing-wage requirement.

Section 3 of the State Act (Ill. Rev. Stat. 1975, ch. 48, par. 39s-3) provides as follows:

> "Not less than the general prevailing rate of hourly wages for work of a similar character on public works in the locality in which the work is performed, and not less than the general prevailing rate of hourly wages for legal holiday and overtime work, shall be paid to all laborers, workmen and mechanics employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work. * * *" (Emphasis added.)

In turn, the Act defines "public works" in section 2 of the Prevailing Wage Act (Ill. Rev. Stat. 1975, ch. 48, par. 39s-2) as:

> " * * *
> * * * all fixed works constructed for public use by any public body * * *."

This definition is the standard definition of "public works" given in court decisions in the United States. See Southern Surety Co. v. Standard Slag Co. (1927), 117 Ohio St. 512, 159 N.E. 339; Demeter Land Co. v. Florida Pub. Serv. Co. (1930), 99 Fla. 954, 128 So. 402; Ellis v. Common Council of Grand Rapids (1900), 123 Mich. 567, 82 N.W. 224; Cutting v. McKinley (1933), 130 Cal. App. 136, 19 P.2d 507; Peterson v. U.S. for Use of Marsh Lumber Co. (1941), 119 F.2d 145. The term "public works" or an equivalent phrase has been used in Illinois to describe the building of a jail (County of Mercer v. Wolff (1908), 237 Ill. 74, 78) and the widening of streams and improvement of harbors. People ex rel. Deneen v. Economy Power and Light Company (1909), 241 Ill. 290, 327.

The kind of work being done in this program simply is not within the plain meaning of the words "the construction of public works" and the accompanying definition of that phrase as "all fixed works contracted for public use by any public body". These words bring to mind the raising of public buildings and the laying of highways and other projects constructed for the benefit and use of the public in general.

The houses renovated under the residential rehabilitation program are not for public use, they are private homes.

Furthermore, the Act only applies when "Any public body [is] engaged in the construction of public works * * *". (Ill. Rev. Stat. 1975, ch. 48, par. 39s-3.) The City of DeKalb is only subsidizing the construction. It is not doing the construction or contracting for the construction. The home owner does the contracting, not the city.

Therefore, I conclude that the Prevailing Wage Act does not by its terms apply to the rehabilitation of single family housing in the City of DeKalb's program.

Very truly yours,

ATTORNEY GENERAL