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RJO Update: Construction **July 2012**

State Bldg. & Const. Trades Council of Calif., AFL-CIO, v. City of Vista, No. S173586, 2012 Cal. LEXIS 6166

By Joseph C. McGowan, Jr. and Tyson Arbuthnot

The requirement to pay prevailing wages on California public works construction projects just became a little less prevalent. In a recent decision, the California Supreme Court held that a California *charter city* may opt-out of state laws requiring contractors to pay prevailing wages on locally funded construction projects.

The decision in *City of Vista* involved two contracts to design and build fire stations in the City of Vista with funds derived solely from city coffers. The City of Vista, a “charter city” in San Diego County, had enacted an ordinance that prohibited the city from requiring contractors to pay prevailing wages on locally funded projects. The two fire station contracts, per the ordinance, did not mandate that contractors pay prevailing wages as determined by the Director of California’s Department of Industrial Relations. The state construction workers union filed a lawsuit contending the ordinance and contracts violated state prevailing wage law.

A charter city is a type of local government with rights under the California Constitution to govern its own “municipal affairs.” Charter cities may enact local ordinances to opt-out of certain state laws. In contrast to charter cities, so-called “general law cities” are subject to all applicable requirements of state law. Many local cities such as San Francisco, Oakland and even San Ramon have designated themselves as charter cities or counties. Others, such as Pleasanton, remain “general law cities” that are bound by state law.

Applying a four-prong test, the majority opinion in the *City of Vista* held that Vista’s ordinance was an exercise of its constitutionally-protected rights as a charter city. First, the Court determined that the wages of contractors working on a city-funded, city-operated project that benefits city residents are “quintessentially a municipal affair.” Second, given that state law specifically requires contractors on even locally-funded public projects to pay prevailing wage, the Court noted there was a clear conflict between the City of Vista’s ordinance and California’s prevailing wage legislation. Third, the Court ruled there was “no statewide concern” in requiring contractors working on city-funded projects to pay prevailing wage. As the Court determined there was no statewide concern, it did not consider the fourth prong of the test, whether the law is reasonably related to resolution of the statewide concern and narrowly tailored to avoid unnecessary interference in local governance.

Two dissenting justices severely criticized the majority opinion. These justices opined that prevailing wage is a statewide concern due to the regional nature of contemporary construction markets. They also noted the state's interest in supporting apprenticeship programs to train new workers across the state. The dissenting opinions remarked that even locally funded projects benefit from the higher regional wage rates and apprenticeship programs.

The effect of the rule on the construction industry may be limited. First, the exception to prevailing wage rules will only apply where the owner is a *charter* city or county. Second, project funding must be purely local. Where there is state or federal money involved, state prevailing wage and or federal Davis Bacon rules still apply. Third, the charter city must choose to adopt ordinances opting out of prevailing wage rules. Many cities may decide that the benefits of having their contractors pay prevailing wage outweighs the costs and, therefore, choose to require payment of prevailing wage.

How We Can Assist

If you have any questions about this subject, please contact the authors of this Case Alert, Joseph C. McGowan, Jr. (jmcgowan@rjo.com) or Tyson Arbuthnot (tarbuthnot@rjo.com). RJO's Construction Law Practice Group (<http://www.rjo.com/construction.html>) regularly represents and counsels a wide variety of construction industry clients. The Construction Law Practice Group's articles are available on our web site, at http://www.rjo.com/pub_construction.html. Please visit our web site now and in the future as we continue to track and analyze developments in construction law.

The content of this article is intended to provide a general guide to the subject matter, and is not a substitute for legal advice in specific circumstances.