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FILE NO.: 84-013

LABOR:
Prevailing Wage Act - Application
of The State Mandates Act to Repeal
of Maintenance Work Exception

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Community Affairs
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Dear Mr. Woelffer and Mr. Bernardi:

I have your letter wherein you inquire regarding the applicability of The State Mandates Act (Ill. Rev. Stat. 1983, ch. 85, par. 2201 et seq.) to the provisions of "AN ACT regulating wages of laborers, mechanics and other workers employed in

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 2.

any public works, etc." (Ill. Rev. Stat. 1983, ch. 48, par. 39s-1 et seq.) [Prevailing Wage Act], as amended by Public Act 83-443, effective January 1, 1984.

As you know, the Prevailing Wage Act requires the State and its subdivision to pay the prevailing rate of hourly wages for work on public works projects. (Ill. Rev. Stat. 1983, ch. 48, par. 39s-3.) Prior to the enactment of Public Act 83-443, the Act contained language excluding "maintenance work", as formerly defined in section 2 of the Act (Ill. Rev. Stat. 1981, ch. 48, par. 39s-2) from the application of its provisions. Public Act 83-443, however, specifically deleted all language exempting maintenance work on public works projects from the provisions of the Prevailing Wage Act. Thus, the State and its subdivisions are now required to pay the prevailing wage on all public works projects including those which would have previously fallen within the exception for maintenance work.

You have inquired whether Public Act 83-443, by eliminating the maintenance work exception, creates a reimbursable State service mandate or State personnel mandate as defined in section 3 of The State Mandates Act (Ill. Rev. Stat. 1983, ch. 85 par. 2203). In my opinion, the Act in question does not give rise to either type of mandate.

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 3.

The State Mandates Act, inter alia, limits the imposition of certain categories of State-mandated programs or expenses upon local government, as defined in subsection 3(a) of the Act (Ill. Rev. Stat. 1983, ch. 85, par. 2203(a)), without concomitant State fiscal assistance. A State mandate, as defined in subsection 3(b) of The State Mandates Act (Ill. Rev. Stat. 1983, ch. 85, par. 2203(b)), is "any State-initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues". Section 6 of that Act (Ill. Rev. Stat. 1983, ch. 85, par. 2206) requires the State to reimburse local governments, within categories set forth therein, for increased costs accruing to local governments as a result of some, but not all, types of State mandates. Section 8 of the Act (Ill. Rev. Stat. 1983, ch. 85, par. 2208) relieves local governments from the obligation to implement reimbursable mandates for which reimbursement, as required by section 6, is not provided. Although a particular State action may fall within the broad definition of "State mandate", the State is not obligated to reimburse local governments, nor is a local government relieved from compliance with a mandate, unless the mandate falls within a category requiring reimbursement under section 6.

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 4.

Two categories of State mandates which are reimbursable under section 6 of The State Mandates Act are "service mandates" and "personnel mandates". (See Ill. Rev. Stat. 1983, ch. 85, par. 2266 (b) (d).) Subsection 3(f) of the State Mandates Act (Ill. Rev. Stat. 1983, ch. 85, par. 2203(f)) defines a "service mandate" as follows:

"(f) 'Service mandate' means a State mandate as to creation or expansion of governmental services or delivery standards therefor and those applicable to services having substantial benefit spillover and consequently being wider than local concern. For purposes of this Act, applicable services include but are not limited to (1) elementary and secondary education, (2) community colleges, (3) public health, (4) hospitals, (5) public assistance, (6) air pollution control, (7) water pollution control, (8) solid waste treatment and disposal. A State mandate that expands the duties of a public official by requiring the provision of additional services is a 'service mandate' rather than a 'local government organization and structure mandate'."

The above definition includes a list of eight types of governmental services which are within the scope of the term "service mandate". Although this list is not all-inclusive, the enumerated items demonstrate the types of services which were intended to fall within the scope of such a mandate.

It is clear that the term "governmental services", as used in the aforementioned definition, refers to the kinds of programs or services which local governments ordinarily or by their nature would provide to their constituencies at large.

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 5.

Service mandates include State actions which require local governments to establish or expand programs, or to maintain specified standards when carrying out existing programs. Public Act 83-443, which only broadens the requirement that the State and its subdivisions pay the prevailing wage on public works projects, does not require the creation or expansion of any governmental service or program, and thus, its provisions do not give rise to a "service mandate" as that term is defined in subsection 3(f) of the Prevailing Wage Act.

The second category of State mandate about which you inquire is a "personnel mandate", as defined in subsection 3(h) of The State Mandates Act:

"(h) 'Personnel mandate' means a State mandate concerning or affecting local government (1) salaries and wages; (2) employee qualifications and training (except when any civil service commission, professional licensing board, or personnel board or agency established by State law sets and administers standards relative to merit-based recruitment or candidates for employment or conducts and grades examinations and rates candidates in order of their relative excellence for purposes of making appointments or promotions to positions in the competitive division of the classified service of the public employer served by such commission, board, or agency); (3) hours, location of employment, and other working conditions; and (4) fringe benefits including insurance, health, medical care, retirement and other benefits."

Under the plain language of this subsection, personnel mandates are State mandates affecting employees of local governments. Each of the four subjects included within the definition-- wages, employee qualifications, working conditions and fringe

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 6.

benefits--relates to the term "local government" preceding that list. Thus, subsection 3(h) properly includes only State mandates affecting the relationship between local governments and their employees.

In Bradley v. Casey (1953), 415 Ill. 576, the Prevailing Wage Act, as amended in 1951, was construed to apply only to public works constructed under contract, and not to construction projects undertaken by workmen hired directly by public bodies. The Act was subsequently amended in 1957 and 1961 to specifically include employees of public bodies. The constitutionality of these amendments was challenged in City of Monmouth v. Lorenz (1963), 30 Ill. 2d 60, wherein the court stated:

* * *

* * * the legislation has put into a single class public bodies and construction contractors which are for most purposes two entirely different classes. * * * The object of the legislation in question is to insure that workmen on public projects receive the same economic benefits as workmen on projects of a similar nature by regulating the rate of pay they are to receive, but rate of pay is just one factor in determining the economic benefits to be derived from employment, and where, as here, the two classes of employers are by their very nature in such a position that they cannot and do not confer similar economic benefits on their employees exclusive of the rate of pay, an act requiring both classes to pay their employees on construction at the same rate violates the equal

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 7.

protection clause of both the fourteenth amendment to the Federal constitution and section 22 of article IV of the Illinois constitution.

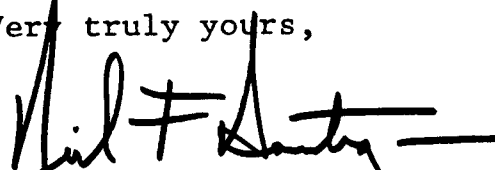
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(30 Ill. 2d 60, at 66-7.)

In Seybold v. City of Chicago (1972), 7 Ill. App. 3d 932, the appellate court relied on City of Monmouth in dispensing with a claim that the Prevailing Wage Act should apply to certain types of public body employees. According to the appellate court, the Illinois Supreme Court "held without limitation and without exception that the placement of construction contractors and public bodies in the same class for the purpose of calculating required monetary compensation was unconstitutional * * *". (7 Ill. App. 3d at 934.) It is clear, based upon previous construction of the Prevailing Wage Act and the constitutional implications of a contrary construction, that Public Act 83-443 did not expand the Prevailing Wage Act to cover employees of public bodies subject to the Act. It is also clear from the legislative history of Public Act 83-443 that the General Assembly did not intend that the Act cover employees of public bodies. (See Remarks of Representative Bullock, June 23, 1983, House Debate on Senate Bill 982, at 3-5.) Therefore, it is my opinion that the amendment of the Prevailing Wage Act contained in Public Act 83-443 does not give rise to a "personnel mandate" as defined in subsection 3(h) of The State Mandates Act.

Mr. Michael T. Woelffer
Mr. Allen Bernardi - 8.

In conclusion, it is my opinion that the Prevailing Wage Act, while it does require that all workers on public works projects be paid the prevailing hourly wage, does not require that local governments create or expand governmental services, nor does it set out standards as to how those services should be delivered to their constituents. Thus, the Prevailing Wage Act does not create a service mandate within the meaning of subsection 3(f) of The State Mandates Act. Furthermore, because the Prevailing Wage Act applies only to contractual work, it does not give rise to a personnel mandate within the meaning of subsection 3(h) of The State Mandates Act.

Very truly yours,


A T T O R N E Y G E N E R A L