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OPINION	:	No. 80-1013
of	:	MARCH 26, 1981
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The Honorable Donald L. Clark, County Counsel, County of San Diego, has requested an opinion on questions which have been revised and restated as follows:

1. Do the prevailing wage requirements of Labor Code section 1720 *et seq*. apply to those who contract with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton where the disposal fees are collected (a) by the county, (b) by the contractor?

2. Do the prevailing wage requirements of Labor Code section 1720 *et seq*. apply to those who contract with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton where the landfill sites are leased to the contractor?

3. Is a person who contracts with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton required to be licensed under the Contractors' State License Law?

CONCLUSIONS

1. The prevailing wage requirements of Labor Code section 1720 *et seq*. apply to those who contract with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton whether the disposal fees are collected by the county or by the contractor.

2. The prevailing wage requirements of Labor Code section 1720 *et seq*. apply to those who contract with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton whether or not the landfill site is leased to the contractor.

3. A person who contracts with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton is required to be licensed under the Contractors' State License Law.

ANALYSIS

Presently, the County of San Diego ("county," post) operates its own refuse disposal landfill. This operation currently performed by the county is generally described as follows:

1. On delivery of solid waste to the landfill, the fee collector collects a gate fee according to the type of vehicle.

2. The vehicle enters the landfill site, where an employee directs it to an unloading area where the refuse is deposited (tipped).

3. Heavy equipment spreads refuse over the face of the tipping area. In the process, the heavy equipment passes over previously deposited refuse, compacting it.

4. At the end of each day, equipment spreads cover material over the refuse deposited that day, to a minimum depth required to reduce fire and rodent exposure, usually three inches to six inches.

5. Cover material is normally obtained from other locations on the landfill site. It is necessary to remove earth in large quantities and transport it to the landfill face or to an on-site stockpile.

6. As the face of the landfill advances and/or progresses laterally the county provides temporary haul roads to. the tipping area. These are usually located on the surface of previously filled areas, although sometimes they may be cut into the face of an

adjoining slope.

7. The county provides similar service roads for its own equipment as needed for access to borrow areas or equipment storage areas.

8. Temporary drainage ditches are provided to route surface water away from the fill areas as the landfill progresses.

9. The county continually monitors the filled areas for the production of methane and/or the presence of leachate (subsurface water or other liquids passing from the hill.

10. Occasionally, the county will grade the final deck level of the fill to ensure proper drainage.

11. Any sizable construction projects, such as permanent drainage facilities, paved access roads, scales, fee booths, etc., are constructed by contract using standard bidding procedures.

It is proposed that the functions set forth above, except for the collection of fees, be performed by a contractor.

The first inquiry is whether the prevailing wage requirements of Labor Code section 1720 *et seq*.[1] apply to those who contract with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton. Section 1771 provides:

> "Except for public works projects of five hundred dollars ($500) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and *not less than the general prevailing rate* of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workmen employed on public works.
>
> "This section is applicable only to work performed under contract and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work." (Emphasis added.)

Section 1772 provides that workmen employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work. Section 1720 provides in part as follows:

"As used in this chapter 'public works' means:

"(a) Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority."

The issue presented is whether the operation hereinabove described constitutes construction, alteration, demolition, or repair work within the meaning of section 1720, subdivision (a), or maintenance work under section 1771.

In our view, the operation constitutes an "alteration" of the land surface. In *Priest v. Housing Authority* (1969) 275 Cal. App. 2d 751, 756, the court observed:

"We also note that entirely ignored by both parties is the word 'alteration' appearing in section 1720. To 'alter' is merely to modify without changing into something else. While, in connection with a building, one ordinarily thinks of 'alteration' as being a modification or addition to it, such a limited meaning has not been here provided by the Legislature. The section does not refer to alteration of a 'building' or 'structure'; for aught that appears the term may, as well as not, apply to a changed condition of the surface or the below-surface."

We perceive no legally significant distinction with respect to the collection of the gate fee. Whether such fee is collected by an employee of the county or of the contractor, in the absence of additional facts, has no bearing or effect upon the nature of the work, as a public work, or of the funds, as "public funds" within the meaning of section 1720, subdivision (a).

In the second inquiry we are asked to assume that the landfill sites are leased to the contractor. In the absence of additional facts, it cannot be determined that the existence of a lease would fundamentally change the relationship between the parties. We are still concerned with a public "work done under contract" within the purview of section 1720, subdivision (a), where, under the terms of the contract, the nature of the services provided, and the source and amount of consideration, based on a fixed price per ton, remain unchanged. The facts presented are wholly dissimilar to those in *International Brotherhood of Electrical Workers v. Board of Harbor Commissioners* (1977) 68 Cal. App. 3d 556, where, under an oil and gas lease calling for payment of royalties to the city, the city assumed no risk of loss incurred in the operation of drilling, production and sale of oil from the tidelands involved and retained no interest apart from the receipt of its percentage of oil and gas produced and sold by the contractor at its own expense. (*Id*., at p. 562.) In

such a case, the public entity has simply leased its interest in designated lands to a private industrial enterprise, as a source of revenue. An entire range of factual situations may be conceived, extending from the operation of a private commercial enterprise upon land leased from a public entity subject only to the continued designated use which serves a public purpose, to the operation of a public work for and on behalf of a public entity, and subject to its control and supervision, for a contractually established consideration. While the point along the continuum between these factual settings at which a public work becomes a private endeavor may not be readily perceived, we are persuaded that the county, in the situation presented here, has entered into an agreement, whether in conjunction with a lease or otherwise, for the operation of *the county's refuse facility* which constitutes a "public work" within the meaning and subject to the provisions of section 1720 *et seq*., the purpose of which is to maintain standard wage rates for employees working for or on behalf of a public entity so as to assure superior efficiency of public service. (*Cf. O.G. Sansone Co. v. Department of Transportation* (1976) 55 Cal. App. 3d 434, 458; 35 Ops. Cal. Atty. Gen. 1 (1960).)

Finally, the prevailing wage statutes apply equally to charter as to general law counties. In this regard, it is noted that the court in *City of Pasadena v. Charleville* (1932) 215 Cal. 384 concluded that the application of prevailing wage standards to public contractors was a municipal affair, and that the general statutes, enacted the previous year, did not apply to charter cities. (*Id*., at p. 392.) It is well settled, of course, that insofar as a charter city legislates with regard to municipal affairs, its charter prevails over general state law. (*Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal. 2d 276, 291; *Ector v. City of Torrance* (1973) 10 Cal. 3d 129, 133.) As to matters of statewide concern, however, charter cities remain subject to state law. (*Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 61–62.) While similar rules apply to charter counties (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal. 3d 296,316; *cf. Pearson v. County of Los Angeles* (1957) 49 Cal. 2d 523, 535) the scope of authority reserved to such a county is somewhat narrower. (61 Ops. Cal. Atty. Gen. 31, 33 (1978); 61 Ops. Cal. Atty. Gen. 512, 519 (1978); *cf. City of Roseville v. Tulley* (1942) 55 Cal. App. 2d 601, 605.) Thus, we express no views as to whether the court in *City of Pasadena v. Charleville*, *supra*, would have reached the same result with respect to a charter county. Moreover, the "constitutional concept of municipal affairs . . . changes with the changing conditions upon which it is to operate. What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state." (*Bishop v. City of San Jose*, *supra*, at p. 63; *cf. Perry Farms, Inc. v. Agricultural Labor Relations Board* (1978) 86 Cal. App. 3d 448, 461–462.) It has been suggested in this regard that *Franklin v. City of Riverside* (1962) 58 Cal. 2d 114 may be read as a hint that *Charleville* should be re-examined. (*Smith v. City of Riverside* (1973) 34 Cal. App. 3d 529, 535.)

In any event, *Charleville* is not, in our view, dispositive of the present inquiry. Specifically, the enactment by the Legislature of wage rate standards is now expressly authorized under article XIV, section 1 of the California Constitution (*infra*). In 1932, that section (then art. XX, § 17 1/2) provided:

> "The legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety and general welfare of any and all employees."

In response to the contention that the Public Wage Rate Act of 1931 (now § 1720 *et seq*.) was enacted pursuant to that specific constitutional authority, the court in *Charleville* said in part (*id*., at p. 393):

> "If the legislature assumed to enact the statute now under consideration under the authority of that portion of the section which purports to be a grant of power to fix a minimum wage, it is at once apparent that the grant did not contemplate that legislation thereunder should extend to the establishment of wages for any class of persons except those specifically mentioned, namely, women and minors."

In 1970, article XX, section 17 1/2 (renumbered in 1976 as art. XIV, § 1) was amended to provide:

> "The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers."

This provision dealing specifically with the compensation of employees constitutes an entirely adequate constitutional basis (*cf. Perry Farms, Inc. v. Agricultural Labor Relations Board*, *supra*, 86 Cal. App. 3d at pp. 460–461) for the enactment of the legislation in question, providing for the payment of "not less than" the prevailing wage rate, and governs over the general provisions of article XI, section 4 of the California Constitution pertaining to county charters and over any provision of a county charter to the extent of inconsistency. (See 63 Ops. Cal. Atty. Gen. 151, 152 (1980); 30 Ops. Cal. Atty. Gen. 11 (1957); 5 Ops. Cal. Atty. Gen. 186, 187–188 (1945).)

It is concluded that the prevailing wage requirements of section 1720 *et seq*. apply to those who contract with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton, whether the disposal fees are collected by the county or by the contractor, and whether or not the landfill site is leased to the contractor.

The third inquiry is whether a person who contracts with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton is required to be licensed under the Contractors' State License Law (§ 7000 *et seq*. of the Bus. & Prof. Code).[2/] The term "contractor" is defined in section 7026 as:

> ". . . any person, who undertakes to . . . construct, *alter*, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, *excavation* or other structure, project, development or improvement. . . . The term contractor includes subcontractor and specialty contractor." (Emphases added.)

Pursuant to the authority of the Contractors' State License Board to adopt reasonably necessary rules and regulations to effect the classification of contractors (§ 7059), the board has defined the business of "earthwork and paving contractors ' (class C-12) as:

> ". . . the execution of contracts to dig, move, and place material forming the surface of the earth, other than air and water, in such a manner that a cut, fill excavation, grading, trenching, backfilling, tunneling, if incidental thereto, and any similar excavating, grading and trenching operation can be executed, including the use of explosives in connection therewith; or the mixing, fabricating and placing of paving and surfacing materials and to do any part, or any combination thereof."

(Tit. 16, Cal: Admin. Code, § 745.) In our view, the county's landfill operation, involving substantial earth moving and grading, falls within the definition of "contractor" for purposes of the Contractors' License Law.

We note, however, the provisions of section 7040:

> "This chapter does not apply to an authorized representative of the United States Government, the State of California, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this State."

This section has not, insofar as we are aware, been the subject of judicial interpretation. While the terms of the section may exempt public officers and employees (see generally, 63 Ops. Cal. Atty. Gen. 24, 26–27 (1980)), an independent contractor performing work for a public agency is not ordinarily deemed to possess the status or position of such public

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[2/] Hereinafter, all section references are to the Business And Professions Code unless otherwise specified.

agency, as a representative or otherwise, so as to fall within a provision exempting such agency and its officers and employees from the requirements of a statute. This has been the apparent underlying assumption of numerous opinions of this office in which it was concluded, without reference to section 7040, that a contractor performing work for a public agency is required to be licensed in accordance with a generally applicable statutory scheme. (*Cf.* 47 Ops. Cal. Atty. Gen. 158, 160–162 (1966); unpublished opns. of the Cal. Atty. Gen. numbers I.L. 66–156 (1966), I.L. 68–180 (1968), I.L. 69–4 (1968), I.L. 71–65 (1971).) The Legislature has not amended section 7040 to express any contrary intent. (*Cf. California Correctional Officers' Association v. Board of Administration* (1978) 76 Cal. App. 3d 786, 794.)

The licensing of contractors is a matter of statewide concern which has been fully occupied by statute, preempting any inconsistent ordinance of a local entity whether chartered or not. (*Horwith v. City of Fresno* (1946) 74 Cal. App. 2d 443, 447; and *cf. Agnew v. City of Culver City* (1956) 147 Cal. App. 2d 144; *Lynch v. City of Los Angeles* (1952) 114 Cal. App. 2d 115; *Agnew v. City of Los Angeles* (1952) 110 Cal. App. 2d 612; *Collins v. Priest* (1949) 95 Cal. App. 2d 179; *City and County of San Francisco v. Boss* (1948) 83 Cal. App. 2d 445; 42 Ops. Cal. Atty. Gen. 118, 121 (1963); 43 Ops. Cal. Atty. Gen. 115 (1964); and see §§ 460, 7032.)

It is concluded that a person who contracts with a county to conduct the county's refuse disposal landfill operations at a fixed price per ton is required to be licensed under the Contractors' State License Law.

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