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OPINION	:	No. 86-803
of	:	DECEMBER 31, 1986
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THE HONORABLE RON RINALDI, DIRECTOR, DEPARTMENT OF INDUSTRIAL RELATIONS, has requested an opinion on the following question:

Are a fire station and a library "public works" upon which "prevailing wages" must be paid by a private developer, where the developer agrees to construct the facilities and transfer them to a county as a condition precedent for the county amending the land use element of its general plan and approving the final subdivision maps for the development?

CONCLUSION

A fire station and a library are "public works" upon which "prevailing wages" must be paid by a private developer, where the developer agrees to construct the facilities and transfer them to a county as a condition precedent for the county amending the land use element of its general plan and approving the final subdivision maps for the development.

ANALYSIS

It is now common practice for private developers of large parcels of land to provide for public facilities, such as schools, fire stations and libraries, within their developments. A city or county may require the financing or construction of such facilities before approving the plans for development. (See, e.g., Gov. Code, §§ 65864 [the Legislature encourages development agreements between the local agency and developer concerning the financing of public facilities], 65974 [the developer may be required to dedicate land or pay fees or both for school facilities as a condition of approving the project], 66411.1 [construction of offsite and onsite improvements may be required of the subdivider], 66419 [improvements may be required of the subdivider as a condition precedent to approving the sub- division map and to provide consistency with and implementation of the general plan], 66475.4 [dedication of real property, transfer of facilities, or installation of improvements as a condition of map approval], 66485 [improvements installed by the subdivider imposed by local ordinance]; Pub. Resources Code, § 21081 [approval of a project after requiring the mitigation of significant environmental effects]; *Candid Enterprises, Inc.* v. *Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 881-882 [fees imposed to construct school facilities as a condition of granting a building permit]; *Associated Home Builders etc. Inc.* v. *City of Walnut Creek* (1971) 4 Cal.3d 633, 644 [dedication of land or payment of fees as a condition of map approval]; *J. W. Jones Companies* v. *City of San Diego* (1984) 157 Cal.App.3d 745, 749-758 [facilities benefit assessments charged on parcels to be developed].)

The question presented for analysis is whether a fire station and a library constitute "public works" requiring the payment of "prevailing wages" where they are being constructed by a developer on land to be transferred to a county as a condition precedent for approval by the county of the plans for the entire development project. We conclude that such wages must be paid.

Labor Code section 1771[1] states:

> "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."

[1] All references hereafter to the Labor Code are by section number only.

Section 1771 is part of a comprehensive statutory scheme (§§ 1720-1861) dealing with the construction of public works. It requires the payment of "the general prevailing rate of per diem wages," as determined by the director of the Department of Industrial Relations (§ 1770) based upon various factors (§ 1773).

"Public works" for purposes of section 1771 are defined in a number of ways. The basic definitions are contained in section 1720:

> "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.
>
> "(b) Work done for irrigation, utility, reclamation and improvement districts, and other districts of this type. 'Public work' shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.
>
> "(c) Street, sewer or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether such political subdivision or district operates under a freeholder's charter or not.
>
> "(d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.
>
> "(e) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds."[2]

In construing the language of section 1720, we may rely upon several well-established principles of statutory construction. The primary rule to be followed is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials* v. *Board of Equal.* (1959) 51 Cal.2d 640, 645; accord, *People* v. *Davis* (1981) 29 Cal.3d 814, 828.) In determining such intent, we "turn first to the words themselves for the answer" (*People* v. *Knowles* (1950) 35 Cal.2d 175, 182; accord, *People* v. *Black* (1982) 32 Cal.3d 1, 5), giving to them "their ordinary and generally accepted meaning" (*People* v. *Castro* (1985) 38 Cal.3d 301, 310; accord, *People* v. *Craft* (1986) 41

[2] "This chapter" refers to sections 1720-1861.

Cal.3d 554, 560). Moreover, "every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect" (*Moore* v. *Panish* (1982) 32 Cal.3d 535, 541); "a statute should not be given a construction that results in rendering one of its provisions nugatory" (*People* v. *Craft*, *supra*, 41 Cal.3d 554, 560). "[B]oth the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." (*California Mfrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) Finally, with specific regard to prevailing wage statutes, we must give them a liberal construction in favor of coverage. (*Walker* v. *County of Los Angeles* (1961) 55 Cal.2d 626, 634-635; *Melendres* v. *City of Los Angeles* (1974) 40 Cal.App.3d 718, 728; *Goodrich* v. *City of Fresno* (1946) 74 Cal.App.2d 31, 36; see also *Shalz* v. *Union School Dist.* (1943) 58 Cal.App.2d 599, 606; 35 Ops.Cal.Atty.Gen. 1, 3 (1960).

The purpose of prevailing wage laws is to obtain well-qualified, competent and efficient workers for the construction of public facilities by assuring that they are paid commensurate with those working in private industry. (*U.S.* v. *Birmingham Construction Co.* (1953) 347 U.S. 171, 176-177; *Walker* v. *County of Los Angeles*, *supra*, 55 Cal.2d 626, 639-640; *O. G. Sansome Co.* v. *Department of Transportation* (1976) 55 Cal.App.3d 434, 456-461; *Melendres* v. *City of Los Angeles*, *supra*, 40 Cal.App.3d 718, 728; *Shalz* v. *Union School Dist.*, *supra*, 58 Cal.App.2d 599, 607; 35 Ops.Cal.Atty.Gen. 1, *supra*, 3.)

Here we have a fire station and a library being constructed for a county. The facilities, including the land upon which they are situated, will become the property of the county immediately upon completion of construction. The agreement to transfer the properties is a condition precedent for the county's amendment of its general plan land use element (see Gov. Code, §§ 65350-65361) and the approval of the final subdivision maps for the development (see Gov. Code, §§ 66456-66462).

Significantly, the county will retain control over the construction of the two projects. The agreement between the county and the developer provides:

> "County's Board of Supervisors, in its sole discretion, may determine and direct either the developer or the County to prepare the necessary plans, specifications and construction documents and award the construction contracts for said initial facilities. County will consult with the developer regarding the plans and specifications for said facilities, but County's Board of Supervisors shall retain authority for final approval thereof."

Such ultimate control over the construction of these facilities by the county cannot be equated with the mere issuance of building permits and the enforcement of building codes by the county in the usual situation. Here, the design and function of these

projects will be directly controlled by the county due to the agreement under which they will be built and the future county ownership interests and public uses involved.

Returning to the language of section 1720, we believe that the fire station and library in question come within the terms of subdivision (c). They are "improvement work done under the direction and supervision or by the authority of . . . any political subdivision."

One might argue that subdivision (c) of section 1720 is limited to the construction of improvements that are similar to "streets and sewers."[3] This issue was analyzed in 35 Ops.Cal.Atty.Gen. 1, *supra*, where we examined in detail the legislative history of the provision. We concluded that a building would constitute an "improvement" for purposes of subdivision (c) since use of the term throughout the statutory history disclosed broad, sweeping coverage; "[t]he test is not whether the 'improvement' is of a 'street and sewer' nature, but rather whether it is to be done under 'the direction and supervision' etc., of county or other public officers." (*Id.*, at p. 3.)[4]

If any meaning is to be given to the general words "direction," "supervision," and "authority," they must be found applicable here where the facilities will be constructed under agreement with the county, for acts undertaken by the county, subject to final approval by the county as to design and function, immediately becoming county property upon completion, and the sole uses thereof to be for public purposes. The county's agreement with the developer gives the county ultimate direction, supervision and authority over the work performed by the developer, which we believe is the degree of control necessary to meet the test of section 1720, subdivision (c).[5]

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[3] The rule of statutory construction supporting such limitation is known as *ejusdem generis*. (See *Sears, Roebuck & Co.* v. *San Diego County Dist. of Carpenters* (1979) 25 Cal.3d 317, 330-331; *Davis* v. *Continental Insurance Co.* (1986) 178 Cal.App.3d 836, 839; *People* v. *Overly* (1985) 171 Cal.App.3d 203, 208-209.)

[4] If the Legislature had intended a different interpretation of subdivision (c) than the one contained in our opinion, it could easily have so provided over the past 26 years during which time it twice amended the statute. (See *Tiffany* v. *Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 227; *Cristmat, Inc.* v. *County of Los Angeles* (1971) 15 Cal.App.3d 590, 595; *People* v. *Union Oil Co.* (1968) 268 Cal.App.2d 566, 571; *Cal. State Employees Assn.* v. *Trustees of Cal. State College* (1965) 237 Cal.App.2d 530, 536-537; *Millsap* v. *San Pasqual Union Sch. Dist.* (1965) 232 Cal.App.2d 333, 336; *Meyer* v. *Board of Trustees* (1961) 195 Cal.App.2d 420, 432.)

[5] While ultimate control by the public agency appears essential to meet the terms for inclusion within section 1720, subdivision (c), we reject the argument that a public agency may insulate itself from section 1771 responsibilities by the simple expedient of hiring someone else to give such degree of "direction and supervision or . . . authority." (See § 1772.)

Unlike subdivision (a) of section 1720, subdivision (c) does not require the payment of public funds in defining "public works." The presence of such a condition in the first subdivision and lack thereof in the third demonstrates contrasting legislative purposes. """When different language is used in the same connection in different parts of a statute it is presumed the legislature intended a different meaning and effect."""" (*People* v. *Moore* (1986) 178 Cal.App.3d 898, 903.) This presumption comports with the legislative history of the statute. (See Stats. 1937, ch. 397, § 4; 35 Ops.Cal.Atty.Gen. 1, *supra*, 2-3.)[6]

Although subdivision (c) of section 1720 also refers to chartered cities and counties as coming within its provisions (see *Bishop* v. *City of San Jose* (1969) 1 Cal.3d 56, 71 (dis. opn. of Peters, J.), we find no indication that such inclusion is the sole legislative purpose of its enactment (see § 1721; *Bishop* v. *City of San Jose*, *supra*, 1 Cal.3d 56, 64-65).

We find support for our conclusion in *International Brotherhood of Electrical Workers* v. *Board of Harbor Commissioners* (1977) 68 Cal.App.3d 556. There the Court of Appeal considered two significant points in determining the applicability of section 1720: whether the property was to be owned by the public agency upon completion of construction and whether the agreement between the agency and the developer "contemplate[d] any of the results falling within the kinds of results contemplated by section 1720." (*Id.*, at p. 562.) Here, the fire station and library are to become the property of the county and the agreement contemplates that the facilities be built under the direction, supervision and authority of the county.

Also supporting our conclusion is the language of section 1720.2. This statute defines as "public works" subject to the payment of prevailing wages any project that has "more than 50 percent of the assignable square feet of the property . . . leased to the state or a political subdivision for its use" and the lease is "entered into prior to the construction contract" or if "entered into during, or upon completion of, the construction work," the "work is performed according to plans, specifications, or criteria furnished by the state or political subdivision." If the Legislature intended to cover the construction of a project that would only be *partially leased* by a public agency, surely it meant to cover facilities built under agreement with a public agency to be *entirely owned and operated* for public uses immediately upon completion.

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[6] Because we conclude that subdivision (c) is applicable, we need not address a second question asked by the requester concerning whether use of funds generated under the Mello-Roos Community Facilities Act of 1982 (Gov. Code, §§ 53311-53365.7) to reimburse the developer would make the facilities "public works" under subdivision (a) of the statute. (See Stats. 1986, ch. 1102, § 7; Gov. Code, § 53314.9, subd. (a)(3).)

Moreover, our conclusion is supported by the common definition of "public works": "'all fixed works constructed for public use.'" (*Cutting* v. *McKinley* (1933) 130 Cal.App. 136, 138.) Fire stations and public libraries are quintessential examples of traditional public works.

Finally, we note that section 1771 by its own terms "is applicable only to work performed under contract." The meaning of the "contract" language in the statutory scheme was analyzed in *Bishop* v. *City of San Jose*, *supra*, 1 Cal.3d 56. The Supreme Court concluded that the Legislature intended thereby to exclude the situation where the public agency was using its own employees to construct the facilities. (*Id.*, at pp. 63-65.) The Legislature codified the *Bishop* decision by amending section 1771 to expressly exclude "work carried out by a public agency with its own forces." (Stats. 1974, ch. 1202, § 1; see *O. G. Sansone Co.* v. *Department of Transportation*, *supra*, 55 Cal.App.3d 434, 459.) Here the construction work is not being performed by county employees but rather by persons employed under contract to the developer pursuant to the agreement between the county and developer.[7]

The intent of section 1771 is to have public facilities constructed by well-qualified, competent and efficient workers. The statute is to be liberally construed in favor of coverage. When a project is constructed in private industry, responsible and expert workers are obtained due to the obvious self-interest involved of ownership of the project upon completion. Here, however, the fire station and library will be built by private industry without such ownership self-interest. To fill this void, we apply section 1771 as intended by the Legislature to have public facilities built to the same quality standards as normally found in private industry.

By finding coverage here, we have given the language of section 1720 its ordinary and generally accepted meaning, harmonized the statutory provisions and given meaning to each, based our analysis upon the legislative history, and provided consistency in our statutory interpretation over a 26-year period. If coverage were not found here, evasion of the statutory requirements could be easily accomplished and the intent of the Legislature would thereby be thwarted.

In answer to the question presented, therefore, we conclude that a fire station and a library are "public works" upon which "prevailing wages" must be paid by a private

[7] Not only is the "contract" language intended to exclude application of the statute where public employees are used, we note that the statute does not specifically require the public agency to be one of the contracting parties. Even if it were so construed, we would interpret the agreement here between the county and the developer to be such a contract in order to effectuate the purposes of the legislative scheme.

developer, where the developer agrees to construct the facilities and transfer them to a county as a condition precedent for the county amending the land use element of its general plan and approving the final subdivision maps for the development.

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