



# Oregon

Bureau of Labor and Industries

Brad Avakian  
Commissioner

John S. Thomas  
Deputy County Attorney  
Office of Multnomah County Attorney  
501 SE Hawthorne, Suite 500  
Portland OR 97214

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*  
Project: North Portland Library (8226 North Denver Avenue, Portland, OR)  
Requested by: Office of Multnomah County Attorney

Dear Mr. Thomas:

On October 20, 2008, you submitted a request on behalf of Multnomah County ("County") asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received by October 21, 2008, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT

1. County represents that the project building will be owned by a private entity ("Landlord"), to be leased by County.
2. Under the project, County proposes to completely remodel an existing building. Also as part of the project, Landlord will improve building, including new construction to expand footprint of building, adding approximately 1,000 square feet to a 5,000 square foot building.
3. Landlord will use private funds for the project. In addition, County estimates that funds of a public agency used to remodel the building may equal or exceed \$750,000.
4. County intends to manage and oversee County-funded work on the project. The County requires Landlord-funded work on the improvement to conform to County specifications before lease can become effective.
5. It is anticipated that a public agency (Multnomah County Library) will occupy the entire completed project.

**PORTLAND**  
800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0763  
Fax (971) 673-0762  
TTY (971) 673-0766

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## CONCLUSIONS OF LAW

1. ORS 279C.827(1) dictates that, generally, a public agency may not divide a public works project into separate contracts for the purpose of avoiding compliance with the Prevailing Wage Rate Laws. In the present instance: the building will be entirely occupied by a public agency; County sought space in the building before improvements were begun; the Landlord-funded improvements and the County-funded improvements will be for the same, single structure; the two project phases are simply consecutive components of a larger, overall plan; the work funded by the private entity is required to conform to County specifications; the combined improvements have an overall purpose and function. Therefore, under ORS 279.827(1) and OAR 839-025-0310, division of the project for the purposes of the Prevailing Wage Rate Laws would be improper.
2. The project for the improvement of a building is intended to be privately owned. Funds of a private entity will be used. The County estimates \$750,000 or more of funds of a public agency may be used. Therefore, if County's estimate of County costs is accurate, and \$750,000 or more of funds of a public agency will be used, then, the definition of "public works" under ORS 279C.800(6)(a)(B) will apply to this project.
3. Alternately, the project for major renovations will be carried on by County, to house the Multnomah County Public Library, which will serve the public interest. Therefore, even if County's estimate of County costs is inaccurate and less than \$750,000 of public funds will be used, the definition of "public works" under ORS 279C.800(6)(a)(A) will apply to this project.
4. The project specifically includes expanding the footprint of the existing building. Therefore, the "public works" exception for publicly leased, reconstructed or renovated private property under ORS 279C.800(6)(b)(A) does not apply to this project if the property is leased by a public agency. *See* OAR 839-025-0004(23).
5. None of the exemptions listed in ORS 279C.810(2) apply to the project as proposed.
6. Definitions that may be relevant to this determination are in ORS 279C.800 and OAR 839-025-0004.

## DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do apply to construction of the development proposed for 8226 North Denver Avenue, in its entirety.

This determination is based on the agency's file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

## **REQUEST FOR A RECONSIDERATION**

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

## **RIGHT TO A HEARING**

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator  
Wage and Hour Division  
Bureau of Labor and Industries  
800 NE Oregon St., Suite 1045  
Portland, Oregon 97232

If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: November 12, 2008

Brad Avakian, Commissioner  
Bureau of Labor and Industries

*Christine N. Hammond*

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Christine N. Hammond, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries