

MAINE STATE LEGISLATURE

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October 11, 1965

Marion Martin, Commissioner

Labor and Industry

George C. West, Deputy

Attorney General

Interpretation of Chapter 406, Public Laws 1965

In your memo of October 1 you have asked for an interpretation of certain words and phrases contained in the above chapter.

1. Section 1304.5. Locality is defined as follows: "'Locality' means where the construction is to be performed."

Does this mean a unit as small as a civil division or as large as the State? The bill as it was introduced used counties as the locality. It was revised in committee and the present definition substituted for it. The county unit would ease our administrative work but our question is whether this would be permissible in view of the history of the legislation.

OPINION:

It is necessary to look at other sections of this statute to properly interpret the intent of the legislature.

Section 1306 in the second sentence provides:

"The 'fair minimum rate of wages,' for the intent and purposes of section 1304 to 1313, shall be the rate of wages paid in the locality in this State as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry."

Section 1305. Policy declared.

"It is declared to be the policy of the State of Maine that a wage of no less than the prevailing hourly rate of wages for work of a similar character in this State in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements."

Section 1308.

"1. The Department of Labor and Industry, from time to time, shall investigate and determine the prevailing hourly rate of wages in the State.

"In determining such prevailing rates, the Department of Labor and Industry may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally in this State where the construction of the public improvement is to be performed."

There is an apparent conflict between the quoted language in sections 1306, 1304 subsection 5, and sections 1305 and 1308. In the first two sections "locality" seems to mean a small confined area "where the construction is to be performed." This would normally seem to indicate a single municipality, except in the cases of highways, roads, and bridges which may, and often do, run through multiple municipalities or even cross county lines.

On the otherhand, sections 1305 and 1308 talk in terms of "the prevailing hourly rate of wages in this State" and "such rates as are paid generally in this State." Obviously the Legislature did not intend the Department to determine more than one set of wages for any place where work is to be performed.

Generally, when the Legislature enacts a statute to be administered by a Department and fails to define words or phrases used, the Department is authorized to supply the definition. Of course, the Department cannot go beyond the limits of the statutes, nor can it define words or phrases contrary to the intent of the statute.

Although the Legislature has defined "locality" to mean "where the construction is to be performed", it has not indicated whether this means statewide, county wide, municipality or some area greater or less than these designations. It is therefore the duty of the Department to define "where the construction is to be performed."

The Statewide area can be ruled out as the law is only applicable in this State and it would make no sense to say the Legislature meant "locality" to mean the State as a whole. The Legislature rejected the county theory by changing the original draft.

We believe that to define "locality" as a municipality would do violence to the statute. We only have to visualize a small rural town of 300 or an unorganized plantation in which there would be no figures from which to make a determination of a fair minimum wage to realize that determinations on a municipal basis would be impossible.

We believe the only method by which the Department can make its determination is on a so-called labor market basis. The Department can determine labor markets and using those as centers determine fair minimum wage rates for a reasonable area, fanning out from these central labor markets. In this way the whole state can be covered.

We believe the Department can thus administer the law in a proper manner.

2. Section 1305 uses the term "similar character". Would this mean that only one determination of minimum wage rates would be required and that this determination would include building construction as well as heavy construction? If not, would there of necessity be more than the two classifications and further determinations would need be made for dams, ditches, highways, etc.?

OPINION:

We believe that one classification is sufficient, if the work in building construction and heavy construction is similar. In other words, a rough carpenter is a rough carpenter whether working on a building or on heavy construction.

3. Section 1305 uses the phrase "laborers, workmen, and mechanics". Would this include foremen, timekeepers, and apprentices?

OPINION:

We believe a foreman and timekeeper would not come under the words "laborers, workmen and mechanics." We believe the law is not intended to cover persons in supervisory or so-called white collar jobs.

On the other hand an apprentice would be covered if the trade in which he is an apprentice is covered.

George C. West
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