



New York State Department of Labor
David A. Paterson, *Governor*
Colleen C. Gardner, *Commissioner*

July 29, 2010



Re: Request for Opinion
Article 8 Applicability - Parking Lot
RO-10-0021—Follow-Up

Dear [REDACTED]:

This letter is written as a follow-up to communication between you and the Department earlier this year with regard to the applicability of Article 8 to the construction of a parking lot by a business owner on property owned by the County. The Department's previous letter determined that the first prong of the two-pronged test used for determining whether Article 8 of the Labor Law applied was satisfied by the license agreement between the County and the business owner regarding the use of the land in question. That letter, however, requested additional information needed to enable the Department to determine whether the second prong of the two-pronged public work test, i.e. whether the project's primary objective is to benefit the public, was satisfied. Your letter contained the license agreement permitting the use of the property for the purpose of constructing a parking lot and pursuant to which the work is to be performed. A follow-up conversation with you indicated that the land had no value to the County, that it had become a staging area for criminal activity, and that the construction of the parking lot by the business owner on public property was being permitted as an accommodation to the neighboring business owner.

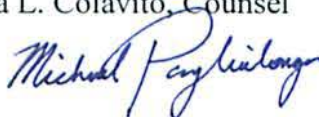
Based upon the information provided in your letter and telephone calls along with our consideration of the license agreement, blueprints, and photos of the site in question, and our consideration of the relevant case law, please be advised that it is the opinion of this Department that the project in question does not fall within the coverage of Article 8 of the Labor Law since the project's primary objective is to benefit the business owner's operation by providing additional parking for customers of his establishment. The fact that the land on which the parking lot construction project will take place remains publicly-owned does not, in itself,

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convert a project intended to increase the profitability of a business into a public purpose. Additionally, while it can be argued that the value and utility of the land may be increased by the construction of the parking lot (a point that some would debate should they prefer to leave the land undeveloped as green space), the business owner is undertaking the construction for his own private purpose and at his expense in support of the operation of his business, not to improve its value to the County. A review of the blueprints for the lot and an aerial view of the property also reveal that there will be no public access to the lot from any public buildings nearby so that it will not provide parking for individuals frequenting those public buildings. While there will also be an arguable public benefit in that property that is being used as a staging area for criminal activity will be changed to a useful purpose, that purpose is tied to the business owner's needs, not the public's. A coincidental benefit to the public is not sufficient to establish a primarily public objective for the project. Accordingly, it is the Department's opinion that the project in question is outside of the coverage of Article 8 of the Labor Law.

This opinion is based upon and specific to the facts described in your letters dated February 4, 2010, and April 9, 2010 and the documents enclosed therein, and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel



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