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California Supreme Court Rules That State's Prevailing Wage Law Is Not Quite So Prevailing: Charter Cities Need Not Require Prevailing Wages on Publicly Funded Municipal Construction Projects

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On July 2, 2012, the California Supreme Court issued its long-awaited decision in *State Building and Constructions Trades Councils of California, AFL – CIO v. City of Vista*, No. S173586. The court held that locally funded public works projects performed by chartered cities are municipal affairs under the California Constitution and, as a result, the wages paid to workers on charter city projects are not subject to California's prevailing wage law. While this decision resolves the issue as to whether the municipal affairs or "Home Rule" doctrine can be used by charter cities to avoid the application of the state's prevailing wage law, interested parties will seek to explore the boundaries of the ruling.

Background

On June 5, 2007, the City of Vista held a special election asking residents to decide whether to change from a "general law" city to a "charter" city. The ballot materials explained that the reason for the proposed change was to give Vista greater control over its municipal affairs, including control over the bidding process and contracting procedures on public works, and when and if the city would pay prevailing wages on its local construction projects. Voters overwhelmingly passed the ballot measure, and the Vista City Council subsequently amended its local ordinances to prohibit any city contract from requiring the payment of prevailing wages unless: (a) payment of prevailing wages was required by the terms of a state or federal grant; (b) the contract did not involve a municipal affair; or (c) payment of prevailing wages was separately authorized by the city council.

In October 2007, the city council approved contracts to design and build two fire stations that would be paid for by an increase in the local sales tax. The resulting contracts with the construction contractors did not require payment of prevailing wages. The State Building Trades Council then sued the City of Vista, claiming that the payment of prevailing wages for the fire station contracts was required by state law. Both the trial court and a California Court of Appeal sided with the city, and the State Building Trades Council appealed to the California Supreme Court.

The California Supreme Court's Decision

The issue before the California Supreme Court concerned a conflict between the California prevailing wage law, which provides that workers on all public works projects paid for in whole or in part by public funds must be paid the prevailing wage, and the exemption for chartered cities found in the California Constitution, which provides that charter cities may make and enforce all local ordinances and regulations with respect to municipal affairs free from state regulations, other than those regulations governing matters of statewide concern. To resolve the conflict between municipal affairs and laws of statewide concern, the court applied the following four factor test:

1. Whether the city ordinance at issue regulates an activity that can be characterized as a municipal affair.
2. Whether the case presents an actual conflict between state and local law.
3. Whether the state law addresses a matter of statewide concern.
4. Whether the state law is reasonably related to resolution of that statewide concern and narrowly tailored to avoid unnecessary interference with local governments.

Under this test, the court observed, if the "subject" of the state statute is one of statewide concern and reasonably related to the resolution of that concern, and the state law at issue is not "unduly broad" in its sweep, then the conflicting charter city measure ceases to be a municipal affair, and the state is free to regulate the matter.

The California Supreme Court found that the city's use of local funds to build two local fire stations was a municipal affair, and that there was a conflict between the state law (the California prevailing wage law) and the city's ordinance (which generally prohibited any city contract from requiring the payment of prevailing wages). In resolving that conflict, the court determined that the California prevailing wage law is *not* a state law of broad general application, unlike the general minimum wage law that applies to all employees working in the state. In particular, the prevailing wage law "has a far narrower application, as it pertains only to the public works projects of public agencies." Because the prevailing wage law did not present an issue of statewide concern, the city's municipal concern over how its tax dollars would be spent was not preempted by the state requirement that contractors hired by public entities pay prevailing wages on locally funded construction projects.

City of Vista's Impact

The significance of this decision cannot be understated: *City of Vista* has resolved, at least for now, a decade-long challenge to the historic power of charter cities to exempt local public works projects from the costly, often uncertain and always burdensome requirements of the state prevailing wage law. But, the impact of the decision will ultimately be decided in various budgetary and political battles throughout the state, some of which are already underway. The case has been watched closely, by both charter and general law cities, as it wound its way through the courts. Cities from Redding to Irvine have debated its significance, and have awaited the court's ultimate determination. Many cities, uncertain of the outcome, have delayed taking action, fearful of the consequences of guessing wrong. With at least some uncertainty now resolved, a few, and possibly many, cities will likely begin to act.

The option to perform some public works projects without the added expense of prevailing wages may be tempting to many local governments. There are currently 122 charter cities within the State of California, and virtually all of them (along with many general law cities) are experiencing extreme budgetary constraints. Given the enormous budgetary pressures on many cities, this ruling may prompt some general law cities to follow Vista's example and become a charter city in order to take advantage of the exception from the prevailing wage requirement. The savings could be substantial. The recent high profile ballot measures in San Diego and San Jose, resulting in the overwhelming popular votes in June 2012 in favor of trimming public employee benefits and pensions, highlight the desperation of many cities to maintain services while saving money. The *City of Vista* decision gives local governments a way to control costs that was not previously available, and budgetary pressures may lead to the widespread acceptance of public works projects being performed without the prevailing wage requirement.

However, the positions of the different charter cities with regard to prevailing wages are quite diverse. Some charter cities may follow the practice in San Francisco and San Jose, which have enacted their own local prevailing wage ordinances. The ultimate outcome is likely to be highly politicized. Developers and contractors, both union and non-union, should expect to be placed in the middle of this battle, regardless of the outcome. The one certainty is that city council measures will become central to the resolution of this issue. In this regard, the lawsuit in

the *City of Vista* case should be viewed as one front in the political battle between open shop (non-union) contractors and the building trade unions and affiliated union contractors. If anything, the *City of Vista* decision will only serve to increase the political haggling that goes into the approval of virtually every local public works project.

In addition, the well-publicized budgetary travails of the State of California may open the door to many local public works being performed without the prevailing wage requirement. A common budgetary maneuver used by the state to balance its budget is to push certain expenses down to the municipal level. While local governments generally have been highly dependent on state matching funds for construction projects, the loss of such funds from the state, paired with the recent abolition of redevelopment agencies, may place more pressure on local governments and paradoxically free them from state requirements.

Still, it is unclear how much public construction at the local level can be performed without any state funds. The example provided by the *City of Vista* decision to avoid the extra expense of prevailing wages may be a viable option for some of the more prosperous areas in the State of California, which can go it alone for certain projects, but many cities, such as the City of Stockton, simply do not have that option. In the end, much of the publicly-funded construction by charter cities may include some outside financial contribution from the state or federal government, which may render the California Supreme Court's decision moot for a substantial number of public works projects.

Nor should anyone think that this decision will lead to a decrease in lawsuits. The scope of the charter city exemption is not absolute, and litigation is likely to ensue over the extent to which a public works project is locally funded and whether the project itself is one of purely local concern. While a fire station may only serve residents of the city, there are many types of public works projects that could have an impact beyond the local municipality and may not be characterized as a municipal affair. Thus, it is likely that there will be considerable litigation over the scope of the charter city exemption notwithstanding the *City of Vista* decision.

In the end, the California Supreme Court's decision in *City of Vista* provides an option to local governments to control costs and will also sharpen the debate at the local level concerning the utility of the prevailing wage versus the use of free-market and competitively bid labor.

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