U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

Memo #8

#8

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Mr. C. W. Enfield
General Counsel
Bureau of Public Roads
Department of Commerce
Washington 25, D. C.

Dear Mr. Enfield:

This is in further reply to your recent letter regarding the applicability of Section 115 of the Federal-Aid Highway Act of 1956 to owner-operators of trucks or other vehicles. You indicate that the question generally is presented in instances where an interstate project contractor or subcontractor employs individual owner-operators of trucks or other vehicles instead of operating his own equipment.

As you know, Section 115 of the Federal-Aid Highway Act of 1956 applies the Davis-Bacon Act, as amended, to the initial construction of the Interstate System. This Act provides in part "that the contractor or his subcontractor shall pay all mechanics and laborers . . . at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics . . ." The legislative history of the Act indicates that Congress clearly intended by this provision to require that all persons performing the duties of a laborer or mechanic on a covered project be paid at least the predetermined minimum and that such requirement could not be abrogated by contract. In this connection see Senate Report No. 1155, 74th Congress, 1st Session.

The meaning of this provision is also discussed in U. S. v. Landis and Young, 16 F. Supp. 832. In this case, the plaintiff agreed to perform electrical work on a post office building for a fixed price. Although he was paid the stipulated price, plaintiff sued for an additional sum on the theory that he should have been paid not less than the prevailing rate for electricians as required by the Davis-Bacon Act. In allowing the claim, the court said that "the object of this provision (the provision referred to above) was

to require, as a matter of policy, the payment of wages according to the scale named. If the electrical work could be contracted in this manner so as to avoid liability by the principal contractor and its bondsmen, there would be no reason why that of carpenters, paper-hangers, plumbers, etc., could not have been done in the same way, on such terms that the scales of wages for those crafts could not possibly have been paid, resulting in a defeat of the purposes of the agreement and the law under which that provision was incorporated in the contract." Also of interest in connection with this matter are Olano v. Leathers, 2 So. 2nd 486; Industrial Indemnity Exchange v. Southard, 147 S.W. 2nd 939; Kirk v. Yarmouth Lime, 15 A. 2nd 184; Southern Underwriters v. Samanie, 130 S.E. 2nd 1090; McDaniel v. Federal Underwriters, 2 So. 2nd 289; McKay v. Crowell and Spencer Lumber Co., 189 So. 508.

On the basis of the foregoing, it is my opinion that individual owner-operators of trucks or other equipment employed under the circumstances set forth in your inquiry come within the purview of the minimum wage provisions of Section 115 of the Federal-Aid Highway Act of 1956.

Very truly yours,

Stuart Rothman

Stuart Rothman
Solicitor of Labor