

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON 25

Materialmen

SEP 22 1961

MEMORANDUM # 25

TO: AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29
CFR, SUBTITLE A, PART 5.

FROM: James M. Miller
Assistant Solicitor

SUBJECT: Opinions on application of the Davis-Bacon and related
Acts.

Enclosed with previous covering memoranda, copies of opinions on the application of the Davis-Bacon and related Acts were furnished you for information and guidance in your enforcement programs under those Acts.

We are now enclosing a copy of a recent opinion on this same general subject, which we are sure will be of further interest and assistance to you.

Enclosure

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

August 2, 1961

Mr. Fred R. Wolford
Special Assistant to the Commissioner
Labor Relations
Public Housing Administration
Housing and Home Finance Agency
Washington 25, D. C.

Re: Mexico Lumber Company
Central Missouri Component
Parts Company
Project MO-10-1
Mexico, Missouri
E-61-1307 thru 1309
E-62-87

Dear Mr. Wolford:

This is in reply to your letter and enclosures of June 30, 1961 regarding coverage under the labor standards provisions of the Housing Act of 1949, as amended, of the operations of the Central Missouri Component Parts Company, and of the Mexico Lumber Company, both of whom are performing prefabrication work in connection with Housing Project No. MO-10-1, Mexico, Missouri.

As you know, a fine line frequently distinguishes the operations of a materialman and a subcontractor for the purpose of coverage under the Davis-Bacon and related Acts. However, we have reviewed the investigation reports and exhibits submitted by your Fort Worth Regional Office and, in our opinion, the operations of the subject firms on the instant project are clearly distinguishable.

The work being performed by the Central Missouri Component Parts Company is the prefabrication of component roof panels. The specifications for this project called for this type of roof panel, and this information was available to all bidders. This type of roof panel is also prefabricated by other companies in the area. Because of the

requirement of controlled temperature conditions in the plant, and the impracticality of moving plant equipment from job to job, such work cannot normally be done at the site. The firm is located in a permanent building, with ample storage space and equipment, under a three year lease. It also operated a similar plant in Columbia, Missouri which will be closed in November 1961 when its lease expires, and all of its operations will be consolidated in Mexico, Missouri. The firm has applied for a license with The Plywood Fabricator Service, Inc., and it is bidding in the open market for additional work.

It is our opinion that the operations of this firm qualify as those of a materialman, and that they are not subject to coverage of the labor standards requirements on this project.

The work being performed by the Mexico Lumber Company in connection with the project is the prefabrication of wall sections. Apparently, the prefabricated wall sections were not specified for the project as were the roof panels. The wall sections consist of 2" x 4" studs cut to size and nailed together. The sections allow openings for windows and doorways. The prefabrication consists of sawing and nailing and could readily be performed on the job site.

The subject plant was owned and operated by a Mr. Whipple who closed it on January 15, 1961 due to a lack of business. The Mexico Lumber Company held a mortgage on the plant and took it over as of that date. The project contract was awarded on January 31, 1961 and the contract between the successful prime contractor and the Mexico Lumber Company was entered into on approximately February 15, 1961. Mr. Whipple was employed by the company as general foreman to process the prefabrication of wall sections for the subject project. The bidders could have had no knowledge of any unit prices for this work from the Mexico Lumber Company since the bids were opened

on January 5, 1961, ten days before the company took over the plant.

The Mexico Lumber Company did no prefabrication work prior to that being performed for the instant project. It states that it has not advertised for or otherwise solicited additional prefabrication work, since the full plant capacity is being utilized on this project. The plant has not been altered to provide for additional space or machinery, and it is presently stocked with lumber for the instant project only.

Based on the above described circumstances, the Mexico Lumber Company does not appear to qualify as a materialman on the above project. The prefabrication operations constitute, in our opinion, those of a sub-contractor, and the employees engaged therein would be deemed laborers and mechanics employed in the development of the project here involved - and hence entitled to the contract wage rates for their classification of work. The Executive Director of the Housing Authority for the City of Mexico should be so advised by your Office so that steps may be taken to secure compliance with the contract labor standards

We would appreciate a final report in this matter when appropriate corrective action has been accomplished.

Very truly yours,

Charles Donahue
Solicitor of Labor

By


James M. Miller
Assistant Solicitor