

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

November 27, 1957

Mr. Charles A. Horsky
Covington and Burling
Union Trust Building
Washington 5, D. C.

Dear Mr. Horsky:

On June 8, 1956, we replied to your request on behalf of the National Sand and Gravel Association, for rulings and opinions on the applicability of the Davis-Bacon and related Acts to employees of sand and gravel firms engaged in furnishing materials for use in work done under Federal construction contracts. Our views were predicated on hypothetical factual situations with the understanding that, should the need for clarification develop, additional interpretations would be issued.

We are now in receipt of your letter of November 15, 1957, advising that since our prior correspondence, one situation has arisen on which you request that we supplement or clarify our letter of June 8, 1956.

The situation presented in your letter is as follows:

"Smith, a contractor, is engaged in performing a paving contract for a Federal agency at an Air Force Base. In addition to being a paving contractor, Smith owns and operates an asphalt plant and a rock quarry located in a nearby city. Asphalt from Smith's plant and rock from Smith's quarry are sold for private construction and are also sold to city, county, state and federal governments and to individuals performing construction work for city, county, state and federal governments. Asphalt for the Air Force Base paving project is obtained from the same plant. The question is whether truck drivers who are employees of Smith and who deliver materials to Smith's job at the Air Force Base are covered by the Davis-Bacon Act and related laws prescribing labor standards for construction work. Similarly, what is the

situation with respect to Smith's employees at the rock quarry and the asphalt plant sites?

"To state the problem more generally, where a firm owns a business and supplies materials to the general public, does the fact that it also contracts for the construction of a federal project alter its status as a materialman with respect to the construction materials it produces and delivers for use in constructing the project?"

On review of the factual situation presented above, it is our conclusion that employees of Smith at the rock quarry and asphalt plant engaged in delivering materials to the Federal construction project should not be considered subject to the Davis-Bacon Act even though the project to which the material is delivered is being constructed by the same individual who owns and operates the asphalt plant and rock quarry. The basis for this ruling is as follows:

Where a firm owns and operates a business that supplies materials to the public, the fact that it also contracts for the construction of a Federal project does not operate to alter its status as a materialman insofar as the delivery of the supplies or materials is concerned. The delivery of the material by employees at the asphalt plant and rock quarry is considered functionally integrated with and incidental to the sale of the material and therefore not subject to the Davis-Bacon and related Acts. In other words, the drivers making the delivery are employees of a materialman and, therefore, not covered; provided they perform no additional substantial operation at the project site.

The same reasoning would apply to employees other than truck drivers, engaged at the quarry or plant site, their coverage being dependent on whether the operation was that of a true materialman open to the public, or whether the operation was set up exclusively to perform part of the work called for by the construction contract.

Very truly yours,

/s/ Stuart Rothman
Solicitor of Labor

U. S. DEPARTMENT OF LABOR
Office of the Solicitor
Washington 25, D. C.

*Planned Review
Washington letter
(Reviewing subcontractor
furnishing material).*

April 16, 1958

MEMORANDUM *43*

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

From: Stuart Rothman *SR*
Solicitor of Labor

Subject: Opinion on application of the Davis-Bacon and related
Acts.

On July 5, 1956 and December 6, 1957, copies of
opinions on the above subject were furnished you for informa-
tion and guidance in your enforcement programs under the
Davis-Bacon and related Acts.

Enclosed is a copy of an opinion of December 26,
1957, on this same general problem which we are sure will
be of further assistance to you.

Enclosure