

## Charter Cities Are Exempt from Prevailing Wage Laws

Laws of charter cities trump state law when it comes to "municipal affairs;" but state law is supreme as to matters of "statewide concern." So is payment of prevailing wage for public works a municipal affair or a matter of statewide concern? The former, according to the California Supreme Court in [\*State Building and Construction Trades Council of California v. City of Vista\*](#), 2012 Cal. Lexis 6166 (July 2, 2012).

**Vista Exempts Itself.** The state prevailing wage laws require contractors on public works projects to pay "the general prevailing rate of per diem work of a similar character in the locality in which the work is performed." The City of Vista became a charter city, chiefly to avoid paying prevailing wage. A short time later, the City entered into construction contracts for two fire stations without requiring payment of prevailing wage. The State Building and Trades Council brought suit contending payment of prevailing wage is a matter of statewide concern that cannot be avoided by charter cities.

**A Municipal Affair.** Not so, held the California Supreme Court. Reaffirming a case decided in the 1930s, the Court stated that "construction of a city-operated facility for the benefit of a city's inhabitants is quintessentially a municipal affair." While acknowledging the impact of spending practices of municipalities on regional and state economies, the court found those effects are not enough to convert those expenditures into matters of statewide concern.

This is true, the court said, even though prevailing wage laws expressly described payment of prevailing wages as a matter of statewide concern. While such legislative declarations are entitled to great weight, the court said, the ultimate determination of what constitutes a statewide concern is for the courts, not the legislature. The court found that no statewide concern had been presented justifying the state's regulation of wages on charter city public works projects.

**Are Privately Funded Projects Exempt?** Many public works projects are either constructed or funded by developers as a condition of development approval. So is it time for developers to break out the champagne? Not necessarily. In concluding that prevailing wage for public works projects is a municipal affair, the court emphasized that "control over the expenditure of a city's own funds" was at stake. "Autonomy with regard to the expenditure of public funds," the court said, "lies at the heart of what it means to be an independent government entity." Thus, whether the exemption from payment of prevailing wage extends to public works projects funded privately remains something of an open question.

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