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February 21, 1989

Roy Smith, Commissioner
West Virginia Department of Labor
1800 Washington Street, East
Building 3, Third Floor
Capitol Complex
Charleston, West Virginia 25305

Dear Commissioner Smith:

By letter dated November 7, 1988, former Commissioner William C. Carmichael requested the opinion of this office regarding construction of the Bruce Hardwoods manufacturing facility in Randolph County. Specifically, he asked the following question:

"...whether this project would be subject to the prevailing wage law for construction of public improvements - Chapter 21, Article 5A of the code."

After review of the agreement between Triangle Pacific Corp. and the West Virginia Industry and Jobs Development Corp. it appears that this project would not be subject to the prevailing wage law for construction of public improvements.

W.Va. Code 21-5A-2 requires that prevailing wages "be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements."

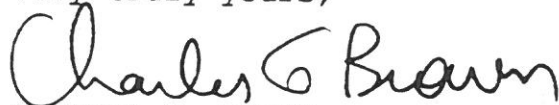
The threshold question is whether the construction of this manufacturing facility is a "public improvement" as that term is used in W.Va. Code 21-5A-1 et seq. The term "public improvement" is specifically defined in W.Va. Code 21-5A-1(4) as "all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the State of West Virginia or any political subdivision thereof."

This definition contemplates the construction of a public use type of facility. A hardwood manufacturing facility is not a public use facility such as a road, bridge or school, but is actually a private business facility. An analysis of this

contract clearly shows that the facility in question is not for public use, nor is it a public improvement. The statute only applies to public improvements.

Accordingly, it is the opinion of this office that as a hardwood manufacturing facility is not a "public improvement" as contemplated by W.Va. Code 21-5A-2, the construction of this particular project is not subject to the prevailing wage statute. "Prevailing wages", as that term is used in W.Va. Code 21-5A-1 et seq., are therefore not required.

Very truly yours,



CHARLES G. BROWN
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CGB:jw