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August 2, 1989

Mr. John H. Brown, Jr.  
Administrator  
West Virginia Department of Commerce  
2101 Washington Street, East  
Charleston, West Virginia 25305

Dear Mr. Brown:

By letter dated July 2, 1989 you requested the opinion of this office on a question regarding the applicability of prevailing wage rates. Specifically you stated:

... I am requesting an Opinion on the application of prevailing wages on construction contracts to be bid and administered by Canaan Valley Resorts, Inc. at Canaan Valley State Park."

After review of the license agreement entered into between the West Virginia Department of Commerce and Canaan Valley Resorts, Inc. on December 30, 1988, pursuant to W. Va. Code § 5-11 et seq., it appears that the projects contemplated by the December 30, 1988 agreement are 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 or not the construction of the facilities at Canaan Valley State Park contemplated by the license agreement are "public improvements" 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 sub-division thereof."

August 2, 1989

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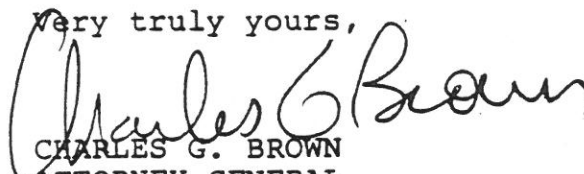
This definition contemplates the construction of a public use type of facility. There can be no dispute that the construction projects contemplated by the license agreement are intended as public use facilities. By its very nature, a state park and its facilities are "public improvements" as they are developed for public use. For example, this license agreement requires that the licensee, Canaan Valley Resorts, Inc. develop a conference center at the Canaan Valley State Park Lodge, ski area developments and improvements, golf course developments and improvements, etc.

The construction projects contemplated by the license agreement are of the type traditionally put out to bid by the State of West Virginia at other state owned parks. But in this situation the state has contracted with Canaan Valley Resorts, Inc. to construct and develop specified improvements at Canaan Valley State Park. Pursuant to this license agreement the Department of Commerce has given Canaan Valley Resorts, Inc. the right to develop revenue generating facilities at Canaan Valley State Park, but there is no conveyance of any title to Canaan Valley Resorts, Inc. In fact, the Department of Commerce even has a purchase option under paragraph thirty-seven (37) of the license agreement. The Department of Commerce thereby reserves the option to purchase improvements constructed pursuant to the license agreement at any time during the term of the license agreement.

Based upon the very specific requirements relating to development under this license agreement and all the terms of the agreement previously discussed, it is evident that Canaan Valley Resorts, Inc. is acting on behalf of the Department of Commerce, a public authority.

Therefore, since the requirements of W. Va. Code § 21-5A-2 are met, prevailing wage rates will apply to construction projects to be bid and administered by Canaan Valley Resorts, Inc. at Canaan Valley State Park.

Very truly yours,

  
CHARLES G. BROWN  
ATTORNEY GENERAL

CGB/jr