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November 30, 2021

Mr. Craig A. Madole - CEO  
Nevada Chapter Associated General Contractors  
5400 Mill Street  
Reno, NV 89502

RE: **Request for Advisory Opinion - Certified Payroll Requirements for Warranty Work/Punch List Work**

Dear Mr. Madole:

Pursuant to Nevada Administrative Code (NAC) Section 607.650 you have requested an Advisory Opinion relating to certified payroll requirements for "Warranty Work/Punch List Work." This Advisory Opinion is made on the information, statements, and representations made to the Labor Commissioner as presented. Should additional information be presented to the Labor Commissioner, statutory or regulatory changes occur and/or any legal proceedings and/or decisions occur after the date of issuance that could change the opinions contained in this Advisory Opinion, the Labor Commissioner may modify it accordingly.

**QUESTION #1: DO CERTIFIED PAYROLL REPORTS NEED TO BE SUBMITTED FOR WARRANTY WORK/PUNCHLIST WORK?**

**ANSWER FOR #1: NO. CERTIFIED PAYROLL REPORTS SHOULD NOT BE SUBMITTED FOR WARRANTY WORK/PUNCHLIST WORK.**

The Office of the Labor Commissioner is responsible for the enforcement of the laws and regulations governing public works projects (PWPs) and the payment of the prevailing wage pursuant to Nevada Revised Statutes (NRS) sections 338.010 through 338.090, inclusive, and Nevada Administrative Code (NAC) sections 338.005 through 338.125, inclusive.

NRS section 338.020 requires payment of the prevailing wage on public works projects and states:

1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:
  - (a) Not be less than the rate of such wages then prevailing in the county in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and

(b) Be posted on the site of the public work in a place generally visible to the workers.

On June 5, 2020, "Adopted Regulation of The Labor Commissioner" Legislative Counsel Bureau (LCB) File No. R018-18, was approved by the Legislative Commission. Sec. 6. NAC 338.009 is hereby amended to read as follows:

1. As used in NRS 338.040, the Labor Commissioner will interpret:

(a) "Employed at the site of a public work" to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work.

(b) "Necessary in the execution of the contract for the public work" to mean the performance of duties required to construct, alter or repair the public work and without which the public work could not be completed.

(c) The terms interpreted in paragraphs (a) and (b) to not include an instance in which a person provides services to the prime contractor or a subcontractor at the site of a public work for a limited period of time if the services provided: (1) Do not include work typically performed by a recognized class of workers; and (2) Are incidental or ancillary to the construction, repair or reconstruction of the public work. 2. As used in this section, "site of a public work" includes job headquarters, a tool yard, batch plant, borrow pit or any other location that is established for the purpose of executing the contract for the public work or that is dedicated exclusively, or nearly so, to executing the contract for the public work. The term does not include a permanent home office, branch plant establishment, fabrication plant, tool yard or any other operation of a contractor, subcontractor or supplier if the location or the continued existence of the operation is determined without regard to a particular public work.

The issue of "Warranty Work/Punch List Work" has been presented to the Office of the Labor Commissioner before. The previous advice given was that if the public works project (PWP) was completed and/or substantially completed and a Notice of Completion submitted to the Office of the Labor Commissioner, then additional "Warranty Work/Punch List Work" would not require certified payroll reports pursuant to NRS 338.020 and NAC sections 338.092 through 338.100. Because the project was completed/closed, contractors/subcontractors paid, and retention released, there would be no need to submit additional certified payroll reports. This advice is still the same.

In addition to this advice, the Office of the Labor Commissioner is advising awarding/public bodies that they need to clarify what is considered “Warranty Work/Punch List Work” and make that clear in their contracts and to the contractors/subcontractors working on their projects. The awarding/public body needs to make it clear what is still being considered work subject to certified payroll requirements because the project is not completed and/or substantially completed, and what is not because the work is now incidental and/or ancillary. The contractors/subcontractors need to be consistent as well and should not unilaterally decide what work requires a certified payroll report and what work does not. Work that could include minor touch up work, small areas of painting, minor corrections, i.e., “Warranty Work/Punch List Work”, etc., that is not being billed directly to the awarding/public body does not require the submission of certified payroll reports. Certified payroll reports are required when actual construction, alteration and/or repair work is being performed to construct, alter and/or repair the public works project/PWP, and without which the public works project may not be completed, functioning, operational, and/or utilized.

**QUESTION #2: DOES WARRANTY WORK/PUNCH LIST WORK REQUIRE THE PAYMENT OF PREVAILING WAGE?**

**ANSWER FOR #2: YES.**

While the Labor Commissioner recognizes that “Warranty Work/Punch List Work” does not require the submission of certified payroll reports by contractors/subcontractors to the awarding/public body, the Office of the Labor Commissioner will require the contractor/subcontractor to provide a signed statement and/or attestation to the awarding/public body certifying that they paid the applicable prevailing wage rate and fringes (if applicable) for the “Warranty Work/Punch List Work.”

The signed statement and/or attestation should include the following:

- (1) Name of contractor/subcontractor.
- (2) Awarding/Public Body Name & public works project number/PWP #.
- (3) Date work completed, and date final certified payroll report was submitted.
- (4) A statement that: *“I hereby certify that this signed statement and/or attestation is a true and accurate statement that the worker(s) were paid the applicable prevailing wage rates for the public works project/PWP and for the warranty work/punch list work.”*

A contractor/subcontractor who falsifies a signed statement and/or attestation or who intentionally does not pay the applicable prevailing wage rate and fringes (if applicable) for “Warranty Work/Punch List Work” may be subject to an administrative penalty of up to \$5,000 per violation pursuant to NRS section 338.015 and disqualification from being awarded a public works project contract for a period of 3-years or 5-years pursuant to NRS section 338.017.

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This Advisory Opinion is not retroactive and does not apply to any previously issued determinations, orders, and/or final decisions issued by the Labor Commissioner or any awarding/public bodies.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shannon M. Chambers". The signature is fluid and cursive, with a large initial "S" and "M".

Shannon M. Chambers  
Labor Commissioner  
State of Nevada