

UCIDA

Ulster County Industrial Development Agency

April 25, 2017

Department of Labor
W. Averill Harriman State Office Campus
Building 12, Room 130
Albany, New York 12240
Attn: Christopher Alund
Director, Bureau of Public Work

Re: DOL Letter dated March 27, 2017
Regarding the Public Work Enforcement Fund

Dear Mr. Alund:

As a designated Officer of Ulster County Industrial Development Agency (the "Agency"), I acknowledge receipt of a copy of your letter dated March 27, 2017 (the "Letter"), in which you indicate that the legislation cited in your letter (the "Law") requires that each State agency or public benefit corporation that enters into a "public work contract" contribute one tenth of one percent of the total cost of such "public work contract" into the "Public Work Enforcement Fund" created pursuant to the Law.

As I am sure you are aware, in a 1984 case entitled *Matter of Erie County Ind. Dev. Agency v Roberts* (63 N.Y.2d 810) (the "Court Decision"), the New York State Court of Appeals upheld a ruling by the Appellate Division, Fourth Department (94 AD2d 532) that a typical industrial development agency project, in which the industrial development agency may hold bare legal title or a leasehold interest but the economic attributes of ownership are vested in a private entity and not the industrial development agency, is not a "public works project" within the meaning of Section 220 of the Labor Law.

The Letter requests that the Agency sign an "affirmation" (the "Affirmation") attached to the Letter, attesting to, among other things, the Agency's "responsibility concerning the Public Work Enforcement Fund".

Unfortunately, the Affirmation attached to your letter would appear to require that the Agency agree to make a contribution into the Public Work Enforcement Fund for "all construction or reconstruction, maintenance or repair contracts let by" the Agency, whether or not such contracts constitute a "public work contract".

Ulster County Industrial Development Agency
P.O. Box 4265, Kingston, NY 12402-4265

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Because our counsel has been unable to find any statutory requirement that the Agency sign an affirmation with respect to the Law, and further because our counsel is of the opinion that the requested Affirmation does not accurately reflect the Law and the Court Decision, I have been advised by counsel not to sign the Affirmation.

If, as the last paragraph of the Letter threatens, you choose to refer the Agency to the Office of the state Comptroller "for further action", I trust that you will include a copy of this letter with that referral.

Very truly yours,

ULSTER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:

SUZANNE HOLT