

*Dept of Labor Memos*

U. S. DEPARTMENT OF LABOR  
OFFICE OF THE SOLICITOR  
WASHINGTON 25

AUG 6 1962

MEMORANDUM # 39

TO : AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29  
CFR, SUBTITLE A, PART 5.

FROM : James R. Beard  
Assistant Solicitor

SUBJECT: Opinions on application of the Davis-Bacon and related  
Acts.

Enclosed with previous covering memoranda, copies of opinions on the application of the Davis-Bacon and related Acts were furnished you for information and guidance in your enforcement programs under those Acts.

We are now enclosing a copy of a recent opinion on this same general subject, which we are sure will be of further interest and assistance to you.

Enclosure

*cc: Messrs Marger, Saylor, Gregory, Taylor; D-Bact; Davis & Davis*

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U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

AUG. 2, 1962

Donald E. Kropp, P. E.  
President  
Ohio Society of Professional Engineers  
1038 N. Pasadena Avenue  
Elyria, Ohio

Dear Mr. Kropp:

Further reference is made to your report concerning the applicability of the Davis-Bacon Act to individuals employed as members of survey crews, which was submitted at a conference I held with representatives of the Ohio and National Societies of Professional Engineers on May 29, 1962.

At that time, your Society set forth its position that the duties of instrumentmen, rodmen and chainmen are technical in nature and are a part of the engineering process; that these individuals are not laborers or mechanics and therefore, are not covered by the aforementioned Act. We have given your report careful study in our review of the entire problem.

The question of coverage would appear to involve two basic issues. First, does the work performed by such persons constitute construction, alteration, and/or repair? Second, are the individuals employed in the work, laborers or mechanics within the meaning of the Davis-Bacon Act? Only when the first question is answered affirmatively would we be concerned with the second.

Since preliminary survey work merely affects construction without being a part of it, it is our position that such work is not generally covered by the Davis-Bacon Act. On the other hand, where surveying is performed immediately prior to and during actual construction, in direct support of construction crews, such surveying would be deemed construction work within the meaning of this act.

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Coverage of the individuals performing this work would further depend upon their individual status as laborers or mechanics.

The Comptroller General has defined the term "laborer" as "one who performs manual labor or labors at a toilsome occupation requiring physical strength as distinguished from mental training and equipment, while a 'mechanic' is any skilled worker with tools, one who has learned a trade." (18 Comp. Gen. 341). A determination that certain members of survey crews fall within this category depends largely upon questions of fact. This determination, which takes into account the actual duties performed by the employees involved, is primarily the responsibility of the contracting agency.

In those cases where the work of an individual functioning in a survey crew is considered professional or sub-professional in character, this Department has held, in accordance with your view, that one so employed is not a laborer or mechanic within the meaning of the Davis-Bacon Act. On the other hand, where individuals perform primarily manual work, such as clearing brush and sharpening stakes, they would fall within the definition of the term "laborer". It is my understanding that situations of the latter kind are not commonplace. However, to the extent that individuals are so employed, they are covered by the aforementioned law.

I sincerely hope that these views will be of assistance to you and the members of your Society and if I can be of further assistance, please let me know.

Yours sincerely,

Secretary of Labor