

October 16, 1997

The Honorable J. P. Schmidt
Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Mr. Schmidt:

Re: Suspension of Contractors for Violation of
Chapter 104, Hawaii Revised Statutes

By letter dated July 25, 1997, you asked whether a contractor who is found to have violated chapter 104, Hawaii Revised Statutes (HRS), for the third time and who is currently performing a public works contract should be immediately suspended from further government work for a period of three years (and therefore may not complete the contract) or whether the contractor should be allowed to complete performance, but be suspended from entering into new contracts with governmental entities for a period of three years.

We conclude that section 104-25, HRS, requires a contractor to be immediately suspended from doing work on the existing contract and be prohibited from entering into new contracts for future work.

Section 104-25 is contained within chapter 104, titled "Wages and Hours of Employees on Public Works." Chapter 104's predecessor in the Revised Laws of Hawaii 1955 was originally enacted in 1955 and was patterned after the federal Davis-Bacon Act. H. Stand. Comm. Rep. No. 189, Haw. H.J. 639 (1955). The purpose of the chapter was to aid in promoting fair competition among contractors on public works. *Id.* Toward this end, the statute attempts to create a level playing field whereby all contractors are required to pay the same wage rates to laborers and mechanics on all government construction jobs (irrespective of whether the workers are unionized or not). Thus, no contractor can win a contract with a low bid intending to pay his workers less than the "prevailing wages." ([top](#))

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The enforcement mechanism of this chapter is a system of progressive sanctions for violations of chapter 104. In all cases, a governmental contracting agency shall order pursuant to section 104-21 any contractor to pay any unpaid wages or overtime that should have been paid as required by chapter 104. Penalties for first, second, and third violations are specified by section 104-24 as follows: ([top](#))

§104-24 Violations; penalties. (a) Where the department [of labor and industrial relations] finds that a first violation of this chapter has been committed, the department shall assess a penalty of not more than \$1,000 for each offense.

(b) Where a second or third violation occurs, whether on the same contract or another, within two

years of the first violation, the director, after proper notice and opportunity for hearing, shall order the person or firm in violation:

- (1) If it be a second violation, to pay a penalty of ten per cent of the contract amount; or
- (2) If it be a third violation, to be suspended as prescribed in section 104-25.

At issue is the interpretation of section 104-25, which prescribes the suspension by the State Director of Labor and Industrial Relations for a third violation. That section reads as follows: ([top](#))

§104-25 Suspension. (a) The director shall suspend a person or firm from doing any work on any public work of a governmental contracting agency for a period of three years if the person or firm:

- (1) Commits a third violation of this chapter within two years from the date of the first violation;
- (2) Fails to make the person's or firm's employees whole for wages or overtime pay due under the contract; or
- (3) Fails to pay any penalty assessed.

(b) The director shall immediately notify the comptroller and the auditor or director of finance of the county of any suspension order.

(c) On application by the suspended person or firm, no less than one year from the date of suspension, the director, after a hearing, may shorten the term of suspension; provided that the contractor or

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subcontractor has made the contractor's or subcontractor's employees whole for wages or overtime pay due and has paid to the director all penalties assessed under this chapter.

(d) No contract shall be awarded to the person or firm so suspended or to any firm, corporation, partnership, or association in which the person or firm has an interest, direct or indirect, until three years have elapsed from the date of suspension, unless the period of suspension is reduced as herein provided. Any contract awarded in violation of this subsection shall be void.

(Emphasis added.) ([top](#))

As stated in *Kaiser Foundation Health Plan, Inc. v. Department of Labor and Industrial Relations*, 70 Haw. 72, 82, 762 P.2d 796, 801 (1988), "The fundamental starting point for interpreting a statute is the language of the statute itself. *State v. Moniz*, 69 Haw. [370], 742 P.2d 373 (1987). Where the statute's language is plain and unambiguous, the court's only duty is to give effect to its plain and obvious meaning. *Hubbell v. Iseke*, 6 Haw. App. 485, 727 P.2d 1131 (1986)." Also, "[i]t is a cardinal rule of statutory construction that courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." *State v. Ortiz*, 74 Haw. 343, 351-52, 845 P.2d 547, 551-52 (1993) (citation omitted). And a "departure from [a] literal construction is justified when such construction would produce an absurd and unjust result and the literal construction in the particular action is clearly inconsistent with the purposes and policies of the act." *Hawaiian Ins. & Guar. Co. v. Financial Sec. Ins. Co.*, 72 Haw. 80, 85, 807 P.2d 1256, 1259 (1991) (quoting *Pacific Ins. Co. v. Oregon Auto. Ins. Co.*, 53 Haw. 208, 211, 490 P.2d 899, 901 (1971)). ([top](#))

A plain reading of section 104-25(a) requires the State Director of Labor and Industrial Relations to suspend a person or firm from "doing any work."¹ The usual meaning of the word "suspend" is "to debar temporarily from a privilege, office, or function." Merriam-Webster's Collegiate Dictionary 1187 (10th ed.) ([top](#))

¹ The original statutory language provided in pertinent part as follows: "[I]f it be a third violation the appeal board shall order the person or firm suspended from doing any work on any public work of a governmental contracting agency for a period of three years." Rev. L. Haw. § 9A-4(b) (1955) (emphasis added).

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In addition to section 104-25(a), section 104-25(d) requires that no contract be awarded to a contractor who has been suspended. In order to give meaning to both subsections (a) and (d), section 104-25(a) must be interpreted to require that the contractor cease further work.

Had the Legislature intended only a suspension from contracting, the Legislature could simply have adopted the language from the federal Davis-Bacon Act after which Hawaii's law was patterned. The relevant provision of the Davis-Bacon Act reads as follows: ([top](#))

[T]he Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations [to pay unpaid wages] to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

40 U.S.C.A. § 276a-2(a) (West 1989).² Notably, Hawaii not only followed the federal law by enacting what is now section 104-25(d) to suspend a contractor from entering into new contracts, but also enacted what is now section 104-25(a), which suspends a contractor from "doing any work." ([top](#))

Indeed, the notion of immediately suspending a contractor from doing work was contemplated as evidenced by section 104-4's requirement that a public work contract contain specifications which allows the governmental contracting agency to "terminate the contractor's right . . . to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid."

Finally, to allow the contractor to continue working and finish the project may render meaningless section 104-25(d)'s prohibition against the contractor's entering into new contracts. ([top](#))

² Other states having statutes relating to prevailing wages on government construction contracts follow the federal model and do not have additional language suspending "any work." See Cal. Lab. Code § 1777.1(b) (West 1989) (contractor shall be ineligible to bid on or receive any public works contract for a period of three years); 820 Ill. Comp. Stat. 130/11a West 1993 (no contract shall be awarded to a contractor until two years have elapsed).

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This is so because the contractor may suffer no sanction at all if the contractor is in a long-term contract exceeding three years from the suspension order with the government. ([top](#))

We therefore conclude that, if a contractor is found in violation of chapter 104 a third time within a two-year period, that contractor must be suspended from doing any work on any public work of a governmental contracting agency. The fact that this may cause hardships to contracting agencies is a concern which must be addressed by the legislature.

If you have further questions concerning this matter, feel free to contact the undersigned.

Very truly yours,
Bruce W. Rudeen
Deputy Attorney General

APPROVED:
Margery S. Bronster
Attorney General

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