

STEVE SISOLAK  
Governor

MICHAEL J BROWN  
Director

SHARRON M. CHAMBERS  
Labor Commissioner

STATE OF NEVADA



REPLY TO:

OFFICE OF THE LABOR  
COMMISSIONER

1818 COLLEGE PARKWAY, STE 102  
CARSON CITY, NEVADA 89706  
PHONE (775) 684-1890  
FAX (775) 687-8409

Department of Business & Industry  
**OFFICE OF THE LABOR COMMISSIONER**

<http://www.labor.nv.gov>

September 30, 2019

Mr. Graig Madole  
Chief Executive Officer  
Associated General Contractors – Nevada Chapter  
5400 Mill Street  
Post Office Box 7578  
Reno, Nevada 89510

Dear Mr. Madole:

Pursuant to Nevada Administrative Code (NAC) Section 607.650, an Advisory Opinion has been requested clarifying when Prevailing Wage requirements for Truck Drivers apply or are triggered pursuant to Nevada Law.

The Office of the Labor Commissioner issued a previous Advisory Opinion on this subject on June 12, 2017, that is attached and incorporated herein by reference in this Advisory Opinion. The situations involving Truck Drivers that you describe in your Request for an Advisory Opinion include: (1) transporting materials between the site of a public work and an off-site private facility; (2) truck drivers making numerous round trips between the site of a public work and the private facility throughout the course of a single shift with very limited or “de minimis” periods of time being spent at the public work site; and (3) the limited delivery or transportation of materials to the public work and/or from the public work to a private facility.

Nevada Administrative Code Section 338.017 specifies when Truck Drivers are deemed to be employed on a Public Work.

**NAC 338.017 Truck drivers: Periods when deemed to be employed on public work.**  
**(NRS 338.012, 338.040)** A worker who performs the craft of truck driver shall be deemed to be employed on a public work while:

1. Transporting materials at the site of a public work; or
  2. Transporting materials between the sites of a public work.
- (Added to NAC by Labor Comm’r by R090-04, eff. 6-30-2004)

**Nevada Revised Statutes (NRS) 338.010 Subdivision 22 also defines “Supplier”**

22. “Supplier” means a person who provides materials, equipment or supplies for a construction project.

**The Merriam-Webster Dictionary 2019 Edition defines “De Minimis” as:**

**Definition of *de minimis*** = “lacking significance or importance: so minor as to merit disregard.”

In addition, and as you point out in your Request for an Advisory Opinion, “Since at least 1995, and pursuant to Attorney General Opinion (AGO) 95-07, truck drivers transporting materials between the site of a public work and a private facility where work is done at non-Prevailing Wage rates are not employed at the site of a public work and are not entitled to prevailing wage rates. AGO 95-07 (“A truck driver who delivers materials to a Nevada public work does not need to be paid the prevailing wage.”) (Emphasis added.) This conclusion was confirmed by the Nevada Supreme Court in 2002 in the *Granite Construction Co.*, case and again by this Office in 2004, when it adopted NAC 338.017. See *State Dept. of Business and Industry v. Granite Construction Co.*, 118 Nev. 83 (2002.)”

As stated in the previous Advisory Opinion and as set forth above, the current parameters of Nevada Law regarding Truck Drivers do not support the conclusion that the transportation and/or hauling of materials (i.e. sand, soil, rocks, gravel, concrete, asphalt grindings, excavation materials, and construction debris, etc.) to or from an off-site private facility to the public work including, “De Minimis” deliveries, subject that Truck Driving work to Prevailing Wage requirements.

To expand Prevailing Wage requirements to situations where Truck Drivers are engaged in the transportation and/or hauling of materials (i.e. sand, soil, rocks, gravel, concrete, asphalt grindings, excavation materials, and construction debris, etc.) to or from an off-site private facility to the public work including, “De Minimis” deliveries, would be contrary to Nevada Revised Statutes (NRS) Section 338 and NAC Section 338, and specifically NAC Section 338.017.

The Labor Commissioner further finds that Prevailing Wage requirements for Truck Driving work apply only in the following instances as set forth in NAC Section 338.017

1. Transporting materials at the site of a public work; or
2. Transporting materials between the sites of a public work.

Should an Awarding Body or any other party maintain or feel that certain Truck Driving work is subject to Prevailing Wage that does not comply with the requirements of NAC Section 338.017, they should contact the Office of the Labor Commissioner or pursue a potential Complaint pursuant to NAC section 338.107.

This Advisory Opinion supports the conclusion of the previous Advisory Opinion and should be followed similar to the previous Advisory Opinion and from the date of issuance going forward. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please also be advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require that this Advisory Opinion be modified.

Should you have any questions in regards to this matter, please do not hesitate to contact our office at (775) 684-1890.

Sincerely,



Shannon M. Chambers  
Labor Commissioner  
Office of the Labor Commissioner

BRIAN SANDOVAL  
GOVERNOR

STATE OF NEVADA

REPLY TO:

BRUCE BRESLOW  
DIRECTOR

SHANNON CHAMBERS  
LABOR COMMISSIONER



■ OFFICE OF THE LABOR COMMISSIONER  
1818 COLLEGE PARKWAY #102  
CARSON CITY, NEVADA 89706  
TELEPHONE: (775) 687-4850  
FACSIMILE: (775) 687-6409

Department of Business & Industry  
OFFICE OF THE LABOR COMMISSIONER

June 12, 2017

Ms. Vickie C. Coll  
Compliance/Audit Investigator III  
Nevada Department of Transportation  
1263 So. Stewart Street  
Carson City, Nevada 89712

**Re: Request for Advisory Opinion – Truck Drivers**

Dear Ms. Coll:

Pursuant to Nevada Administrative Code (NAC) Section 607.650, an Advisory Opinion has been requested clarifying when Prevailing Wage requirements should apply for Truck Drivers who may or may not be hauling materials (i.e. sand, soil, rocks, gravel, concrete, asphalt grindings, excavation materials, and construction debris, etc.) to an off-site destination. In your Request for an Advisory Opinion, you reference a recent decision issued on March 24, 2017, by the State of California Department of Industrial Relations involving the California Department of Transportation and Granite Construction Company (Granite).

Nevada Administrative Code (NAC) 338.017 specifies when Truck Drivers are deemed to be employed on a public work.

**Truck drivers: Periods when deemed to be employed on public work. (NRS 338.012, 338.040)**  
A worker who performs the craft of truck driver shall be deemed to be employed on a public work while:

1. Transporting materials at the site of a public work; or
2. Transporting materials between the sites of a public work.

Our office conducted an inspection of the off-site yard/pit operated by Granite that appears to be the subject of your Request for an Advisory Opinion. Based on that inspection, it was determined that the off-site yard/pit operated by Granite was not established for a particular public works job involving the Nevada Department of Transportation (NDOT), or involved the transporting of

materials at the site of a public work, or the transporting of materials between the sites of a public work. The off-site yard/pit included non-public work transporting and hauling.

The parameters of current Nevada Law (NAC 338.017) does not support NDOT's position as stated in the Request for an Advisory Opinion that the hauling of materials (i.e. sand, soil, rocks, gravel, concrete, asphalt grindings, excavation materials, and construction debris, etc.) to an off-site destination subjects that hauling to Prevailing Wage requirements. If the site is not established for the purposes of constructing a public work, or includes the transportation of materials at the site of a public work, or between the sites of a public work, it is the current position of the Office of the Labor Commissioner that NAC 338.017 governs when Truck Drivers are deemed to be employed on a public work.

To expand Prevailing Wage requirements to Truck Drivers for those situations not defined in Nevada Revised Statutes (NRS) Section 338 or NAC 338 by adopting the March 24, 2017, Decision of the State of California Department of Industrial Relations and the State of California requirements that are explicitly set out in California law and regulation, would constitute rulemaking in violation of NRS 233B and the Administrative Procedure Act.

The Office of the Labor Commissioner would continue to encourage NDOT to consult with the Office of the Labor Commissioner if there are questions about a specific NDOT project and hauling by Truck Drivers that may occur at a site established for the purposes of constructing a public work, or includes the transportation of materials at the site of a public work, or between the sites of a public work.

This Advisory Opinion should also not be considered to be retroactive or applying to any past matters involving this issue that involved the Office of the Labor Commissioner. Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require that this Advisory Opinion be modified or abandoned.

Should you need any additional clarification, please do not hesitate to contact me at your earliest opportunity at (775) 684-1890.

Sincerely,



Shannon M. Chambers  
Labor Commissioner