

MEMORANDUM

TO: Chairman/Commissioner Croce

FROM: Brian M. Callahan

RE: Inmate Labor

DATE: September 13, 2005

Limited use of inmate labor is authorized by Article 3, section 24 of the New York State Constitution. This provision states as follows:

The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails and reformatories of the state; and no person in any such prison, penitentiary, jail or reformatory, shall be required to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof.

The Legislature has enacted provisions governing the use of inmate labor. See Article 7 (sections 170-200) of the Correction Law. In particular, section 177(2) governs the labor of inmates in local correctional facilities. Such labor shall be devoted primarily to the county and its political subdivisions, and the public institutions therein; and secondly to the State and its political subdivisions. Correction Law section 177(1) governs the labor of inmates in State prisons. Such labor is to be devoted primarily to the State, the public buildings and institutions thereof, and the manufacture of supplies for the State and public institutions thereof, and secondly to the political subdivisions of the State and public institutions thereof.

Neither a county Sheriff nor the Commissioner of DOCS is permitted to make any contract by which the labor or time of any inmate or the product or profit of his or her work is let, farmed out, given or sold to any person, firm, association, or corporation; except that the inmates in said correctional institutions may work for, and the products of their labor may be disposed to, the State or any political subdivision thereof, any public institution owned or managed and controlled by the State, or any political subdivision thereof. See Correction Law section 170(1). While it is possible that some non-profit agencies may be owned and operated by a municipality, it is often not the case, and in such instances inmate labor may not be provided thereto.

For the limited purpose of distributing, marketing or sale of a product of a correctional facility in this State, both the Sheriff of any local correctional facility and the Commissioner of the Department of Correctional Services (DOCS) may enter into a contract with the State, its political subdivisions, or any public corporation, authority or eleemosynary association funded in whole or in part by any federal, state or local funds, to determine the kinds and qualities of articles to be produced by such institution and the method of distribution and sale thereof. See Correction Law section 177(3). For example, inmates in State prison facilities make "CORCRAFT" furniture and DOCS enters into contracts to sell this product to State agencies.

An "eleemosynary" association is one related or devoted to charity. See Black's Law Dictionary (6th Ed. 1990). A not-for-profit corporation may be an "eleemosynary" association. A not-for-profit corporation is defined as one formed exclusively for an authorized purpose or purposes, not for pecuniary profit or financial gain, and no part of the assets, income or profit which is distributable to, or enures to the benefit of, its members, directors or officers except to the extent permitted (by law). See Not-For-Profit Corporation Law (N-PCL) section 102(10). Based upon the foregoing, with regard to a not-for-profit organization, the product (but not the inmate labor) of a correctional facility may be distributed, marketed or sold thereto, provided such organization is funded in whole or in part by federal, state or local funds [see Correction Law section 177(3)].