Workman's Compensation Act, Compensation Plans. Public Work, Certain Compensation Plan Obligatory. Compensation Plan No. 3, Application of Provisions. Sub-Contractors and Principal Contractors, No Distinction Between.

Where a contractor is engaged in public work, the terms, conditions and provisions of Compensation Plan No. 3 are exclusive, compulsory and obligatory upon both the contractor and employees. By entering upon public work he automatically becomes bound by the provisions of Plan No. 3 by operation of law.

The law makes no distinction between sub-contractors and principal contractors.

June 16th, 1915.

Hon. A. E. Spriggs,
Chairman, Industrial Accident Board,
Helena, Montana.

Dear Sir:

You submit the question as to whether if a contractor elects to be bound by Compensation Plan No. 2, and subsequently and while so bound, he secures a contract for public work he is required to pay into the Industrial Accident Fund more than the premium on his payroll for actual work done upon such public contract.

You are advised that where a contractor is engaged in the performance of contract work for a public corporation, the terms, conditions and provisions of Compensation Plan No. 3 are exclusive, compulsory, and obligatory, upon both the contractor and employees, (Sec. 3 e) and it becomes immaterial whether the contractor has theretofore voluntarily elected to be bound by Plan No. 2, for by entering upon public work he automatically becomes bound by the provisions of Plan No. 3 through operation of law. In such case he is bound to contribute to the Industrial Accident Fund a sum equal to the percentages of his total annual payroll, as provided by Sec. 40 (a).

The term "Payroll" is defined by Sec. 6 (ee) and means the average annual payroll of the employer for the preceding calendar year; or, if the employer shall not have operated for a sufficient or any length of time during such calendar year, twelve times the average monthly payroll for the calendar year; provided that an estimate may be made by the Board for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer, or refund by the Board, as the case may actually be, on December 31st of such calendar year.

In view of these provisions, the payroll contemplated by the law is the payroll of employees engaged by the employer for work upon the public contract, and does not, of course, include any payroll of employees of the employer engaged in non-public work.

You are further advised that the law makes no distinction between subcontractors and principal contractors, both classes being bound by the provisions of Compensation Plan No. 3.

Yours very truly,
J. B. POINDEXTER,
Attorney General.