Highways—Wages for Labor on Highways — County Commissioners—Skilled Labor on Highways.

A Board of County Commissioners have authority to allow a higher wage than provided for in Chapter 172 of the 1917 Session Laws for skilled labor on highways.

April 18th, 1918.

Hon. W. M. Biggs, Chairman,
Board of County Commissioners,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date requesting an opinion from this office upon the question, as to whether or not the Board of County Commissioners, under the provisions of Chapter 172, Laws of the Fifteenth Legislative Assembly, may employ skilled labor upon road work and pay therefor in excess of $4.00 per day.

Chapter III of Chapter 172, gives the Board of County Commissioners general supervision over the highways within their county, and

further authorizes such board to divide the county into road districts and to place a Road Supervisor in charge of each such district.

Section 6 of said Chap. III, provides that whenever it is necessary for the Road Supervisor, in repairing any public highway in his district, to secure the assistance of other persons, he shall be empowered to employe suitable laborers, teams and implements and to contract as to the price to be paid therefor, which must not exceed $4.00 per day for eight hours for each person, and $6 for man and team. Section 7, provides for calling upon the inhabitants of any district whenever any highway becomes obstructed or any bridge needs repairing, and that every person responding to such call shall be compensated at the rate of not to exceed $4 per day of eight hours.

I am advised that in carrying on road work, improvements, and repairs it is often necessary to employ skilled labor, such as bridge carpenters, engineers, and etc., and that this class of employees cannot be obtained for $4.00 per day.

It is a well known fact that the wage scale for skilled labor in Montana for many years past, has been greatly in excess of the amount specified in the act just mentioned and we must assume that the legislature was familiar with this condition at the time of the passage of the Act.

Hence, unless the board may employ the necessary skilled labor at a wage in excess of that specified in the Act, the Act itself becomes inoperative and road work, not only in Lewis and Clark county, but thruout the entire state must be almost entirely discontinued. We cannot presume that it was the intent of the legislature to enact a law which should be inoperative.

I have been unable to find any authorities directly in point, but the following case supports the conclusion reached.

By an act of Congress approved Feb. 26, 1885, 23 Stat. at L. 332, the importation into the United States, under contract, of any alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States was prohibited.

In the case of Church of the Holy Trinity vs. United States, 143 U. S. 457, 37 L. Ed. 227, it was held that said act was intended to apply only to unskilled labor.

See also, U. S. vs. Lewis, 163 U. S. 258, 41 L. Ed. 151.

In Ericsson vs. Brown, 38 Barb (N.Y.) 390, one of the sections of the Act of incorporation rendered the stockholders individually liable for all the debts due and owing by the company to its "laborers and apprentices". The plaintiff, being a consulting engineer, rendered services to the company as such, and he was held not to be within the meaning of the statute, and hence could not recover from a stockholder. The statute was held to refer to unskilled labor, where the individual earned his wages more by the labor of his hands than of his head.

In Aikin vs. Wasson, 24 N. Y. 482, the plaintiff contracted with a railroad company to construct part of its road. The defendant was a stockholder in the company which became insolvent. It was indebted to plaintiff for the services of himself and his laborers, and services under his contract. Sec. 10 of the railroad act enacted that "all of

the stockholders of every such company shall be jointly and severally liable for all debts due or owing to any of its laborers and servants for services performed for such company." It was held that the plaintiff was neither a laborer nor a servant within the meaning of the Act. In Coffin vs. Reynolds, 37 N. Y. 640, the statute reads: "The stockholders of any company, organized under the provisions of this act shall be jointly and severally individually liable for all debts that may be due and owing to all laborers, servants and apprentices for services performed for such company." The plaintiff was the Secretary of the company and commenced an action against the defendant as a stockholder to recover the amount of his salary, the company being insolvent. It was held that he could not recover. He was not a laborer or servant within the meaning of the statute.

In Wakefeed vs. Targo, 90 N. Y. 213, under the same statute it was held that one who was employed as a bookkeeper and general manager was not a laborer or servant within the act and hence could not recover against a stockholder, the company being insolvent.

From the foregoing I am of the opinion that the Act in question was intended to apply only to unskilled labor.

Respectfully,

S. C. FORD,

Attorney General.