

Highway Commission, Employee of Interested In Contract—Contracts, Employee Interested In Cannot Claim Compensation.

Where an employee of the Highway Commission is interested in a contract, he cannot claim compensation for services under such contract.

April 26, 1920.

State Highway Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your two letters of 21st and 22nd, inst., with reference to the employment by the State Highway Commission of Mr. Ralph Adams as an Engineer in connection with the construction of two reinforced concrete bridges in the City of Great Falls, now being constructed under the supervision of the State Highway Commission, which are accompanied by copy of specifications of 10th Street bridge, Mr. Adam's proposal with reference to his employment dated Oct. 11, 1919, agreement between State Highway Commission and Mr. Adams dated Oct. 11, 1919, letter from Mr. Adams to State Highway Commission dated April 23, 1919, letter from Porter Brothers, contractors, to Mr. John N. Edy, Chief Engineer State Highway Commission, dated Dec. 3, 1919, letter from Mr. J. B. Carnet, Bridge Engineer City of Spokane, to Mr. John N. Edy, dated April 12, 1920, and telegram from Mr. J. B. Garnett to Mr. John N. Edy, dated April 20, 1920.

As I understand from your letters you desire to be advised regarding the following:

First, whether Mr. Adams, under the agreement entered into between the Highway Commission and Mr. Adams, is the Resident Engineer on the construction work and the representative of the Chief Engineer of the State Highway Commission, with authority to render decisions concerning material and workmanship and materials.

Second, whether Mr. Adams, if he is the manager or representative of the Spokane office of the Trussed Concrete Steel Company, manufacturers and sellers of a patented form of steel reinforcement, and if the contractors have purchased such patented article for use in the construction of the two bridges through the Spokane office of such company, and through Mr. Adams as its manager or representative, to the amount of \$75,000, by reason of his employment by the State Highway Commission under the agreement between the Highway Commission and Mr. Adams, falls within the prohibition of Sec. 7 (b) Chap. 170 Sess. Laws 1917, which prohibits any member of the State Highway Commission or any person in the employ of the Commission, or its Executive Committee from being interested directly or indirectly in any contract for construction, improving or maintaining any road under said Chapter, and if he does fall within such prohibition, whether the State Highway Commission, after ascertaining such facts, is required to discharge Mr. Adams from its employ, and is justified in refusing to pay him any compensation which he claims to have earned under said agreement.

With reference to the first proposition, the specifications for the 10th Street bridge provide that the State Highway Commission shall have full charge of the direction of the construction of the bridge; that the Chief Engineer of the State Highway Commission shall be the Engineer; that the State Highway Commission will appoint an engineer to act as Resident Engineer on the construction work and as representative of the Chief Engineer of the State Highway Commission; that the inspection and supervision of the work shall be done by the Engineer and his decision as to the quality of workmanship and material shall be conclusive.

Examining Mr. Adam's proposal and the agreement entered into between State Highway Commission and Mr. Adams, I find that Mr. Adams did not propose that he be employed as a Resident Engineer to have full charge of the construction of these bridges as the representative of the Chief Engineer of the State Highway Commission, but only proposed that he be employed to render expert advice and consultation service in connection with the supervision and construction of the two bridges, and the agreement entered into is strictly in accordance with this proposal. It does not pretend nor attempt to employ Mr. Adams as a Resident Engineer, or to give him any authority whatever over the supervision or construction of the bridges, but simply provides for his employment to render expert advice and consultation service in connection with the supervision of construction, in other words provides for his employment merely as a consulting engineer who should give the State Highway Commission and its Chief Engineer expert advice concerning construction and supervision during the course of construction. I am, therefore, of the opinion that under this proposal and agreement Mr. Adams is merely a consulting engineer, his sole duty being to give the Commission and its Chief Engineer expert advice, and that while he may advise the Commission and its Chief Engineer expert advice, and that while he may advise the Commission and its Chief Engineer concerning workmanship and materials, the Commission and the Chief Engineer are not bound to accept and follow such advice but may entirely disregard the same, and Mr. Adams, as such consulting engineer is without any authority whatever to render such divisions (rests) regarding engineering or workmanship or materials which are binding upon the Commission or its Chief Engineer, but the sole power to render such decisions rests in the Chief Engineer of the Highway Commission. Any decisions, therefore, which Mr. Adams may render with reference to either workmanship or material, must be considered merely as expert advice to the Commission and its Chief Engineer, which are not binding on either, but which may be entirely disregarded and ignored.

With reference to your second proposition, the agreement entered into between the Highway Commission and Mr. Adams is a contract of employment, and under it Mr. Adams must be deemed an employee of the State Highway Commission. From the letters and telegram accompanying your letter it is clear that Mr. Adams is the manager or representative of the Trussed Concrete Steel Company, and if, as you state, the contractors have purchased from this company and through

Mr. Adams as its manager or representative, for use in the construction of these bridges, the patented article manufactured and sold by this company, then there can be no question but what Mr. Adams is indirectly interested in the contracts for these bridges, and, I am of the opinion, that he falls fairly and squarely within the prohibition contained in Sec. 7 (b) of Chap. 170 Sess. Laws 1917, and it is therefore the duty of the State Highway Commission to terminate the employment of Mr. Adams under the aforesaid agreement, and I believe, that under the circumstances disclosed the Commission will be justified in refusing to pay Mr. Adams any compensation which he may claim to be due him under such contract.

I am returning the specifications, telegram and letter submitted for my examination herewith.

Truly yours,

S. C. FORD,

Attorney General.