

State Highways—Construction of by Board of County Commissioners—Responsibility of State Highway Commission—Employment of Superintendent on Cost-plus Basis.

The duty of supervising construction of State highways, built under Federal aid project by the Board of County Commissioners, on a day labor or force account basis, is upon the State Highway Commission and cannot be delegated to a Board of County Commissioners so as to release said State Highway Commission from responsibility for improper or illegal construction.

The employment of a superintendent of construction by a Board of County Commissioners on a cost-plus basis is not authorized by law, but the responsibility therefor is upon the Board of County Commissioners and not upon the State Highway Commission.

John N. Edy, Esq.,
Chief Engineer State Highway Commission,
Helena, Montana.

My dear Mr. Edy:

You have submitted a sample of county resolutions used in cases where Boards of County Commissioners obtain authority to construct State highways under the supervision of the State Highway Commission. Under these resolutions you submit the following statement of facts and questions:

"The Board of County Commissioners of Carbon County has undertaken the construction of two Federal aid projects on a day labor basis for the state under the provisions of the county resolution referred to. I am reliably informed that the Commissioners are prosecuting this work under the following plan: A superintendent was employed to supervise construction operations, and for his services, including I believe the furnishing of some equipment, the county allows him fifteen per cent of the total cost of the work accomplished. May a Board of County Commissioners legally enter into a contract or employ a superintendent upon the basis mentioned? If such contract or employment is illegal and if the work involved is being done for the state under the terms of the county resolution attached, is this Department in any way responsible therefor?"

Subsection 10 of Section 2, Chapter 3, of Chapter 141, Fourteenth Session Laws, as amended by Chapter 15, Fifteenth Extraordinary Session Laws, seems to fix the pay of the superintendent, or as the law calls him, "a competent road builder," at not to exceed \$8 per day and his actual expenses. This person is to serve under the Board of County Commissioners, and this is the only provision in the law for the hiring of a superintendent to supervise construction of roads. A contract to pay such person on a cost-plus basis is not authorized by the law, and County Commissioners are limited to the authority given them by law. Such contract being illegal, the State Highway Commission could not be held liable on same in any event.

It is, therefore, my opinion that the employment of a superintendent of construction by a Board of County Commissioners on a cost-plus basis in connection with day labor construction is not authorized by law, and that the State Highway Commission is in no way liable or responsible on such a contract.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.