

**Federal Aid Projects—Indian Reservations—Workmen's Compensation.**

Under the facts stated in the opinion, the state highway commission is not an agent of the federal government in connection with federal aid projects.

Jerome G. Locke, Esq.,

July 3, 1926.

Chairman, Industrial Accident Board,  
Helena, Montana.

My dear Mr. Locke:

You have requested my opinion whether W. E. Applegate, a contractor on federal aid work, is required to come under the provisions of Plan No. 3, or whether he may elect to come under the provisions of Plan No. 2 of the workmen's compensation act.

Mr. Whipps, assistant chief engineer of the state highway commission, has kindly furnished this office with a statement of the facts in connection with the letting of this contract, which are set out very fully herein, for the reason as stated by him, that the relation of the Bureau of Public Roads with the highway commission and with the contractor are in this case just the same as in all other federal aid road work.

The facts are as follows:

It appears from this statement that the projects covered by this contract, Nos. 226 and 227, cover the construction of about 37 miles of gravel surface highway on the federal aid system in Glacier county and the Blackfeet Indian reservation between Glacier Park station and Babb.

These projects were initiated by the state highway commission about a year ago by submitting to the secretary of agriculture, through the Bureau of Public Roads, project statements therefor, which were approved by him in due course. The highway commission during last fall and winter prepared surveys and plans for the projects, paying the expenses of same out of the state highway fund, the amount spent for this purpose being approximately \$12,500. The federal aid act requires the state highway department to pay all of the expense of a pre-construction nature for federal aid projects.

After the completion of the plans, the contract was advertised and let on April 27th, 1926, to W. E. Applegate. The contract executed is the standard form used by the highway department and is between the highway commission for the state of Montana and the contractor. The federal government is in no sense a party to the contract.

Since the projects are located principally upon unpatented land within the Blackfeet Indian reservation, 100% federal aid was requested for the construction over unpatented Indian lands, under the provisions of section 3 of the federal highway act of November 9, 1921 (42 Stat. 212) and 56.46% federal aid was requested for the patented land sections. The entire amount of the contract, including the 10% contingent item for engineering and overruns, is approximately \$622,000.00, the federal aid being \$608,000.00 and the local funds (state and county) to match federal aid on the patented sections being \$14,000.

Payment of amounts earned by the contractor under his contract will be made in the regular manner authorized by law for claims against the state of Montana. Each month estimates will be turned in from the field and the amounts earned will be stated upon state claim forms. These claims will be certified by the highway commission to the board of examiners, and after approval state warrants drawn upon the state highway trust fund will be issued by the state auditor. Before payment of the earning for any month, federal aid must be first obtained, since this is almost entirely a 100% federal aid contract. This is accomplished by forwarding to the Bureau of Public Roads, Department of Agriculture, Washington, D. C., vouchers each month stating the work done to date, and claiming payment therefor. These vouchers are certified to the U. S. treasurer, who, through a disbursing agent, issues his check to the state treasurer of Montana for the amount claimed. After the receipt of each monthly check from the U. S. treasurer, the corresponding estimate of the contractor is certified for payment by the highway commission and state warrant drawn as above described.

The question presented in this case arises by reason of the fact that the contractor obtained from the U. S. Fidelity & Guaranty Co. a bond, as required under Plan No. 2 of the compensation act, and it is contended by the insurance company that the highway commission is merely acting as an agent for the federal government with respect to these projects, and that, therefore, the contractor is not required to come under the provisions of the compensation act, as required by section 2840 R. C. M. 1921.

If the state, through its highway commission, is merely acting as agent for the federal government by reason of the very large percentage of the cost of the projects borne by the federal government in this case, then it is conceded that the contractor may elect to come under the provisions of Plan No. 2.

While the federal government has power to build post roads within a state wholly by means of its own agencies and without the cooperation or consent of the state, neither the federal act nor the state act accepting the federal offer of road aid and providing a highway commission, contemplates that the state, through its highway commission, is acting merely as a federal agency. Both federal and state acts contemplate a cooperative agreement and not an agency.

The federal act (39 Stat. 355) states "that the secretary of agriculture is authorized to *cooperate* with the states through their respective state highway departments in the construction of rural post roads."

Section 1791 R. C. M. 1921, provides:

"The State Highway Commission \* \* \* is hereby authorized to do all other things necessary or required to carry out fully the *cooperation* contemplated, by the said act of congress."

It is not contended by the federal government that the state, through its department, is merely acting as its agent in this matter, and, in view of the fact that the contract has been let by the state highway commission and that payment is made by the state in exactly the same manner

as other federal aid projects, it is my opinion that the contractor is estopped from asserting his relationship to the highway commission is any different than in any other federal aid highway contract let through the department of the state highway commission; that the state, through the highway commission, is not acting as a federal agent by reason of the excess percentage of cost borne by the federal government over the usual federal aid project, and that the provisions of Plan No. 3 of the workmen's compensation act are compulsory and obligatory upon the employee or contractor.

Very truly yours,

L. A. FOOT,  
Attorney General.