

stein v. Oakland Title etc. Co., 9 Pac. (2d) 846; 5 C. J. 849, 850, 864, 865, 946, 947; 2 R. C. L. 602; 4 Page on Contracts, sec. 2244 & Supp.)

You have asked us also whether or not it would be proper for the State Highway Commission to accept such an assignment and pay the sum assigned to the assignee when it becomes due. As a general rule, the consent or acceptance of the debtor is not essential to the validity of an assignment either as between the parties or as against the debtor. (Oppenheimer v. First Nat. Bank, 20 Mont. 192; 5 C. J. 937 & Supps.; 4 Page on Contracts, sec. 2295 & Supp.) If, however, the assignment is accepted it should be on condition that the sum assigned is earned through partial or complete performance of the work. (5 C. J. 963; 4 Page on Contracts, sec. 2296 & Supp.)

You have inquired further as to priority of rights in the event the assignment is executed. Generally speaking, the courts hold that as between the assignee of a chose in action and the creditors of the assignor, the assignee will be entitled to priority, and this is so whether the moneys assigned are due at the time of the assignment or are to become due thereafter. (5 C. J. 971, 972, & Supps.) Where the assignment is made before a writ of attachment or execution is served on the debtor of the assignor the assignment is entitled to precedence over the writ. (Osborne v. McDonald, 91 Mont. 83; 5 C. J. 972; 2 R. C. L. 629.)

This, we think, covers the case fully.

Opinion No. 183A

Contracts—Assignments—Priority of— State Highway Commission— Highways—Contractors.

HELD: One who has entered into a contract with the State Highway Commission to construct a piece of road may lawfully assign the amount to become due under the contract for a given month, and it is proper for the Commission to pay the amount earned to the assignee when it becomes due, giving the assignee priority over other creditors.

April 28, 1933

You have asked us whether or not a man who has entered into a contract with the State Highway Commission to construct a piece of road, may at any time in a given month lawfully assign the amount estimated to become due under the contract for such month.

We know of no law which prohibits the making of such an assignment. Indeed, the general rule in this country now is that a chose in action may be assigned with the same force and effect as a chose in possession. That no part or only a part of the amount assigned has yet been earned does not affect the situation where a valid agreement exists. (Milwaukee Land Co. v. Ruesink, 50 Mont. 489; Rate v. American Smelting & Refining Co., 56 Mont. 277; United States Fid. & Guar. Co. v. City of Pittsburgh, 225 Pac. 83; Silver-