

Opinion No. 229.

State Highway Commission—Highways—Contractors—Labor—Wages—Penalty.

HELD: Where a contractor fails to pay the prevailing wages on state highway work he may, under the facts, be liable to a \$500 deduction from the contract price as liquidated damages.

January 11, 1936.

Hon. W. E. Keeley
State Senator
Deer Lodge, Montana

This will acknowledge receipt of

your letter of January 9, in regard to the wage scale on the Race Track overhead pass. In reply we are pleased to enclose a copy of an opinion which we are this day rendering to the State Highway Commission and which we think will effectively prevent this question from arising in the future.

I have before me the original contract between the Montana Highway Commission and the firm of Clifton and Applegate for U. S. Works Program Grade Crossing Project No. WPGH-261 A & B, Units 4.

This contract contains the same provision quoted in our opinion to the Highway Commission but, nevertheless it is the opinion of this office that it is incumbent upon the firm of Clifton and Applegate as a part of the performance of this contract to pay "the standard prevailing rate of wages in effect as paid in the county seat of the county in which the work is being performed" and not less than the rates specified in the contract.

We find that the contract with Clifton and Applegate also contains these two important provisions:

"The contractor shall at all times observe and comply with all Federal and State laws, and local by-laws, ordinances and regulations in any manner affecting the conduct of the work, and shall indemnify and save harmless the State and all its officers, agents, and servants against any claims or liability arising from or based on the violation of any such law, by-law, ordinance, regulations, order or decree, whether by himself or his employees."

"The contractor is assumed to have made himself familiar with all Federal and State laws and local by-laws, ordinances and regulations which in any manner affect the work or those engaged or employed in the work and no plea of misunderstanding will be considered on account of his ignorance thereof. If the bidder or contractor shall discover any provision in the plans, specifications or contract which is contrary to or inconsistent with any such law, by-law, ordinance or regulations, he shall forthwith report it to the commission in writing.

"The contractor's attention is di-

rected particularly to the provisions and requirements of the Workmen's Compensation Act, being Chapter 96 of the Session Laws of the Fourteenth Legislative Assembly of the State of Montana and amendments thereof; also to the statutes regulating the hours of employment on public work."

Under the reasoning of Opinion No. 397 (Vol. 15, p. 276), rendered by this office, and copy of which is also enclosed herewith, it is our further opinion that in the event that the facts justify it the Highway Commission must retain \$500 of the contract price as liquidated damages for the violation of the terms of the contract as provided in Section 3 of Chapter 102, Laws of Montana, 1931.