

Opinion No. 262.**State Highway Commission—Highways—Contractors License—Licenses.**

HELD: The State Highway Commission has no authority to enter into an agreement with the Federal Bureau of Public Roads whereby the requirements of the Montana Contractor's License Law may be avoided in contracts let by the commission which are financed in whole or in part by Federal funds.

April 8, 1936.

State Highway Commission
The Capitol

You have asked us to advise you whether or not an agreement may be validly executed by the proper departments of the State government and the Bureau of Public Roads of the Federal government, whereby the requirements of the Montana Contractors' License Law may be avoided in so far as contracts involving Federal funds are concerned. It is stated that the Bureau of Public Roads objects to the provisions of said law because, it is claimed, they have the effect of restricting competition.

Under the provisions of Chapter 178, Laws of Montana 1935, it is now unlawful for anyone to submit a proposal to or enter into a contract with the State of Montana or any of its departments or subdivision for the construction or reconstruction of any public work when the amount involved in the contract exceeds \$1,000, without having first obtained a license from the State Board of Equalization. Anyone bidding or contracting without the required license is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500, or by imprisonment in the county jail for not more than six months, or both. Section 7 of the Act requires all bids and proposals to con-

tain a statement showing that the bidder or contractor is properly licensed and that "no contract shall be awarded to any contractor unless he is the holder of a license * * *."

It will be noted that said Chapter 178 is a penal law of the State of Montana, the terms of which are mandatory and prohibitory. That being true no officer or department of the State may grant any indulgences authorizing the committal of offenses against its terms. Such officers have no power to authorize the continuance of any act or business which is in violation of law, and any attempt to do so would be unauthorized and invalid and certainly would not be binding upon the State, the courts or the public prosecutors. (State ex rel. Tanner, Attorney General v. Northwestern Investment Company, 70 Wash. 381, 126 Pac. 895; State ex rel. Fishback v. Globe Casket & Undertaking Co., 82 Wash. 124, 143 Pac. 878, L. R. A. 1915B 976; Eastman Oil Mills v. State, 93 So. 484; 59 C. J. 112.) Such an agreement as contemplated in your question would, in our opinion, be contrary to public policy (13 C. J. 455, illegal (13 C. J. 411-413), and void (13 C. J. 410). (Oliver v. Wilder, 149 Pac. 275.)

It has been suggested that your department might enter into an agreement with the Bureau of Public Roads, whereby you would not require contractors to comply with the provisions of said Chapter 178 in contracts let by you which are financed in whole, or in part, by Federal funds. While no exception is made in said Chapter 178 for such contracts, it is argued that you might have authority to enter into such an agreement by virtue of Section 1791 R. C. M. 1921, sometimes known as the Federal Aid Assent Act, which provides "* * * the State Highway Commission for and on behalf of the State of Montana is hereby authorized to do all things necessary or required to carry out fully the cooperation contemplated by the said Act of Congress as hereby assented to, relative to the construction and maintenance of roads and highways in the State of Montana."

We do not think that said Section 1791 has any application to the question before us. As we have pointed

out above, even if the State Highway Commission should attempt to enter into any such agreement it would not be binding upon the State Board of Equalization, or upon the State of Montana or any of its law enforcing agencies, nor would it be a defense to a criminal prosecution brought against a contractor who proceeded under the pretended protection of such an agreement. Furthermore, as compared with said Section 1791 the later Act, Chapter 178, Laws of Montana 1935, is a special law which would at least create an exception to the general law and would, consequently, govern. (59 C. J. 937.)

Your question is answered in the negative.