

## Opinion No. 97.

**Highways—Contracts—Materialmen  
—Liens Against Highway Con-  
tractor—Insurance Premiums.**

HELD: The provisions of Chapter 20, Laws of 1931, are not broad enough to impose a lien for insurance premiums.

2. Notice of a materialman's lien, for materials furnished to a highway subcontractor, must be given within the time and in the manner prescribed by Chapter 20, Laws of 1931.

March 22, 1935.

Mr. W. O. Whipps  
Secretary, State Highway  
Commission  
The Capitol

Your letter to us of recent date is as follows:

"Mr. Ernest L. Walton, attorney of Wolf Point, representing F. M. Hargrave, has presented to the Highway Commission in session today requests for orders or rulings in connection with certain claims filed against contracts with Mr. Hargrave, as more particularly set forth in the attached copies of written requests which Mr. Walton has presented to us.

"The Highway Commission has informed Mr. Walton that they will be guided by the advice of your office in acting upon these requests and also in making payments of funds retained from the earnings of the contracts of Mr. Hargrave in the amount of Forty-five Hundred Dollars which have thus far been held to protect the claims referred to in attached written requests and some other claims.

"Will you please, therefore, at your earliest convenience, give us a written opinion as to the proper course which we should pursue in this matter."

It appears that in the early part of the year 1934, one F. M. Hargrave, doing business under the name and style of Hargrave Construction Company, entered into four separate contracts with the State of Montana, to

construct altogether 154.797 miles of highway for a sum aggregating \$350,788.85. In each instance he executed a bond to the State of Montana in a sum corresponding to the amount covered by the contract and conditioned according to the provisions of Section 1 of Chapter 20, Laws of 1931. Late in the year 1934, the contracts were completed and thereafter the work exacted by each of them was accepted by the State Highway Commission. Out of the amount agreed upon there remains unpaid about \$4,500. It appears further that Syster and Rathbun were subcontractors and in the course of their work they insured the gravel haulers belonging to them with Crichton & Company. The insurance premiums came to \$2,979.83. By reason of credits arising from cancellation of policies this sum was, however, subsequently reduced to \$2,000. On September 26, 1934, Syster and Rathbun assigned to Crichton & Company \$1,440.00 of the moneys due or to become due from F. M. Hargrave, the same when received to apply on the insurance premiums. It appears also that one E. N. Brown rented road equipment to Syster and Rathbun for a period of eight weeks at \$40.00 per week. Brown never gave Hargrave any notice of the agreement between him and Syster and Rathbun. On October 4, 1934, Brown filed notice of claim for \$320.00, and on November 24, 1934, Crichton & Company filed notice of claim for \$2,000.00, against Hargrave and his bonds, with the State Highway Commission.

As the State of Montana was not a party to the assignment made by Syster and Rathbun, it seems hardly necessary to say that such assignment imposed no obligation on the former. It affected only the assignor (Syster and Rathbun), the assignee (Crichton & Company), and the debtor (F. M. Hargrave.)

Chapter 20, Laws of 1931, is designed, among other things, to afford a measure of protection to persons who furnish provisions, provender, materials or supplies to a contractor or subcontractor engaged upon public work. But we think that none of the terms "provisions," "provender," "material" and "supplies," in the sense in which they are used

in the statute, is broad enough to cover insurance. (Miller Ins. Agency v. Porter, 93 Mont. 567.)

Section 2 of Chapter 20 provides that every person who furnishes provender, provisions, materials or supplies to any subcontractor to be used in the construction of any public work, shall not later than seven days after the first delivery thereof give personally or send by registered mail to the contractor a notice in writing stating that such person has commenced to deliver such commodities for use on such work to the subcontractor (naming him) and that the contractor and his bond will be held for the same. It further declares that no suit shall be maintained in any court against the contractor or his bond to recover for such commodities unless the foregoing provision is complied with.

As the State of Montana owes F. M. Hargrave the sum of \$4,500, and as no valid claim has been made by anybody else to the money, the State should no longer retain the same but should pay it to the person rightfully entitled to it.