

1957 O. A. G.

OFFICIAL OPINION NO. 28

July 29, 1957

Mr. L. Derrell Weaver
Commissioner of Labor
225 State House
Indianapolis, Indiana

Dear Mr. Weaver:

This is in reply to your letter of July 24, 1957, in which you inquire as follows:

"Will you please give us an official opinion on the interpretation of Chapter 319, Section 3, Page 1535, of the Acts of the Indiana General Assembly of 1935, referred to in Burns' 53-303.

"The particular question is: If evidence is presented to the Division of Labor of violation of the prevailing wage law, is it the responsibility of the Commissioner of Labor to cause prosecution and enforcement, or is it the responsibility of those aggrieved."

The Acts of 1935, Ch. 319, Sec. 3, as found in Burns' (1951 Repl.), Section 53-303, provides as follows:

"Any contractor or subcontractor who shall wilfully fail or refuse to pay the rate of wages determined as in this act provided, shall be guilty of a misdemeanor and upon conviction thereof shall, for the first offense, be fined not to exceed five hundred dollars [\$500], and for a second offense he shall be fined not to exceed one thousand dollars [\$1,000], and, in addition thereto, the contract on which the violation occurred, in case of a second offense, shall be forfeited and no such contractor or subcontractor shall be entitled to receive any further payment on such contract nor shall the state or the municipal corporation making such contract make any further payments on such contract from any of the funds under its charge or control."

This section makes it a misdemeanor for any contractor or subcontractor to wilfully fail or refuse to pay the rate of wages

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as determined in said Act in the performance of public work as therein defined and provides upon conviction for the imposition of fines, together with the forfeiture of contract for a conviction of a second offense.

The statutory duties imposed upon the Commissioner of Labor are those as contained in Acts of 1945, Ch. 334, Sec. 8, as found in Burns' (1952 Repl.), Section 40-2137, which do not expressly include any language by which you are "to cause prosecution and enforcement" of any statute providing for the imposition of criminal penalties for violation of an Act. The actual causing of the prosecution and enforcement as provided in Burns' Section 53-303, *supra*, is a function of the Prosecuting Attorney in the county in which the alleged violation occurred, to whom the aggrieved workmen should be referred.

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July 29, 1957

Hon. William H. Hardwick
Director of the Budget
302 State House
Indianapolis, Indiana

Dear Mr. Hardwick:

I have your request for an Official Opinion on the following questions:

"1. Section 2c, Chapter 285, Acts of 1957, at page 702, reads, in part, as follows:

" 'From funds herein appropriated, expenditures made for the specific purpose of providing miscellaneous services, which shall consist of:
* * *; (g) payment for improvements to existing buildings including grounds for construction of new buildings including the cost of land for building sites, architects' fees and inspectors' salaries; * * * shall not exceed the sum of
* * *.'

"If the State Highway Commission desired to purchase an already existing building, to be used to house