

Under the above authorities I am of the opinion an indigent patient in a hospital operated by the trustees of Indiana University does not thereby lose his privilege as to the confidential character of information contained in the hospital medical records, due to such person being an indigent patient; that such hospital authorities are not required to give such information from the medical records of such hospital to any committing agency; and that the same may not be furnished except with the consent of such patient.

OFFICIAL OPINION NO. 43

May 18, 1945.

State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Gentlemen:

I have your request for an opinion whether a construction contractor is entitled to payment of the final estimate as against a claim filed against a construction contract under the following state of facts.

The claim in question was filed on December 1, 1944, and notice of the filing was forwarded to the contractor on the same date; and on December 5, 1944, the contractor in writing notified the Commission of the rejection of the claim. On February 9, 1945, the claimant filed action on the claim, and a certificate of the clerk showing the filing thereof was filed with the Commission, in the Bartholomew Circuit Court, in which action there was a failure to name all the parties to the contracting firm that held the contract for construction. Certain procedure took place with reference to the naming of parties and subsequently thereto the defendants filed a motion to declare null and void the certificate filed with the Commission purporting to show that action was filed on the claim within the 90 day period required by statute. The Court, after hearing the motion, which was contested by the claimant, made and entered an order declaring the certificate prepared and certified by the clerk as null and void. The pertinent part of said order reads as follows:

"And it appearing to the Court that plaintiff, Noel E. Daugherty, doing business as N. E. Daugherty Construction Company, having heretofore herein filed his verified motion to strike out and deny the said application filed by the said defendants, the Court now overrules the plaintiffs' motion to strike out and deny the application filed by the said defendants and to which ruling the plaintiff at the time objects and excepts.

"And said defendants' application for an order to require the Clerk to withdraw certificate is submitted to the Court and the Court being duly advised in the premises, finds that the allegations of said application are true and that said application should be approved as therein prayed.

"The Court further finds that there was an action commenced in the Bartholomew Circuit Court entitled Noel E. Daugherty, doing business as N. E. Daugherty Construction Company vs. Ralph A. Landrey, doing business as Ralph A. Landrey Construction Company, Ralph A. Landrey, individually, Paul A. Teegarden, individually, Ralph A. Landrey and Paul A. Teegarden, Partners, doing business as Landrey and Teegarden, Contractors, on the 9th day of February, 1945; that on said date Ralph A. Landrey Construction Company was, and still is, a partnership composed of Ralph A. Landrey and Regina K. Landrey, Partners, and that no action was commenced or pending against Ralph A. Landrey Construction Company, a partnership, until the filing of plaintiffs' amended complaint on April 3, 1945.

"The Court further finds that the certificate of the Clerk of this court issued on February 9, 1945, wherein the Clerk certifies that on the 9th day of February, 1945, there was filed in the office of the Clerk of the Bartholomew Circuit Court an action wherein N. E. Daugherty Construction Company was plaintiff and Ralph A. Landrey Construction Company was defendant is erroneous and the Court finds that no action was commenced on said date against Ralph A. Landrey Construction Company and that said certificate of the Clerk should be declared null and void.

“It is, therefore, considered, ordered and adjudged by the Court that the certificate of the Clerk of this Court heretofore filed with the State Highway Commission of Indiana, and reading as follows:

“State of Indiana,
County of Bartholomew } ss:

The undersigned Clerk of the Bartholomew Circuit Court of Bartholomew County, Indiana, hereby certify that on the 9th day of February, 1945, there was filed in the Bartholomew Circuit Court of Bartholomew County, Indiana, an action wherein N. E. Daugherty Construction Company was plaintiff and Ralph A. Landrey Construction Company was defendant, being docketed and numbered in said court as cause number 8779 and that said action is now pending in said court.

WITNESS, my hand and the seal of the court affixed this 9th day of February, 1945.

Oral D. Wilson,

Clerk of the Bartholomew Circuit Court.”

be and the same is declared to be null and void and is hereby withdrawn, cancelled, and held for naught and that a certified copy of this finding and order of the Court shall be filed with the State Highway Commission of Indiana.

Ordered and done this 15th day of May, 1945.

Geo. W. Long /S/

Judge of the Bartholomew Circuit Court.”

Your question is whether the Commission is now authorized to pay the contractor, if the final estimate is otherwise due, without deduction of the amount of the claim in question.

The statute governing the filing of claims with the Commission against construction contracts authorizes any person furnishing labor and materials to file claim for the amount thereof within sixty days after the last work or material was performed or furnished. The claimant is also required to notify the contractor of the filing thereof. The contractor is then required, within twenty days to accept or reject the

claim and to notify the Commission of his action. Upon notice of rejection the claimant is required to file action on the claim and to file a certificate of the Clerk of the Court evidencing the filing of such action. Following these provisions, the Statute (Acts 1933, Sec. 17, pp. 1209, 1210; 36-2917 Burns' Supp. 1943) provides as follows:

“* * * Within ninety (90) days after receiving notice of such rejection such claimant shall commence an action against said contractor and/or the surety on his bond in some court of competent jurisdiction to recover the amount of said claim, and upon the filing of said action, said claimant shall procure a certificate from the clerk of said court, under his hand and seal of office that said action has been filed with the date of filing the same, and the parties thereto, which certificate shall be forthwith forwarded by such person to said commission. If said action is so filed and the said commission so notified, said commission shall continue to hold said amount, until the final determination of said action, and if it be adjudged therein that the same or any part thereof is due to such claimant, said commission shall pay so much of said amount so adjudged due to such claimant, to the clerk of the court rendering such judgment. If within ninety (90) days after the date of such notice of rejection, said claimant shall fail to file with said commission said certificate of said clerk, said commission shall pay the amount so held by it on said claim to said contractor if he is otherwise entitled to receive the same. In addition to the remedy herein given to such persons, firms or corporations, said person, firm or corporation may proceed against said contractor and the surety on his bond as provided by section 6 of chapter 88 of the Acts of the General Assembly for the year 1935.”

This statute in my opinion provides merely a supplementary remedy for the collection of money due a party furnishing service or materials to the construction contractor and, I think, to take advantage of this remedy it is incumbent upon the claimant to file and prosecute his claim in strict accordance

with the provisions of the statute. It is not within the duty and power of the Commission, however, to adjudicate the merits of a claim nor to adjudicate the question whether a claim has or has not been properly filed and prosecuted, since such questions are judicial and hence for the courts to determine.

It appears from your statement, however, that the Circuit Court of Bartholomew County, in which the cause involving the claim is pending has adjudicated the question of the legality of the filing of the claim in question. The Court by its order has determined that the certificate of the clerk purporting to show the filing of the claim within the statutory period is null and void, and that is to say the certificate is a nullity. The Commission's record in this respect is in the same status as though no action had been filed within the required period, in which event, as against the claim in question, the Commission would in my opinion be authorized to pay the final estimate.

OFFICIAL OPINION NO. 44

May 18, 1945.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of May 15, 1945, received requesting an official opinion on the following question:

“Under Chapter 156, Acts of 1945, County Board of Education Act, in Section 1, I find this sentence: ‘Such additional persons as are employed for the necessary administration of the county school system shall be selected and voted upon by a vote of at least two-thirds of the members of the County Board of Education.’

“Does this passage apply to the election of a county superintendent of schools?”