

not the subject of, or within the period of time covered by, or for services rendered under, the terms of the new contract.

I am therefore of the opinion a teacher having accumulative days who leaves one school corporation and takes employment with another school corporation, thereby loses the benefits of such accumulative days acquired under such previous contract of employment, under the provisions of Chapter 231 of the Acts of 1945.

OFFICIAL OPINION NO. 46

May 22, 1945.

Hon. John H. Lauer, Chairman,
State Highway Commission of Indiana,
State House Annex,
Indianapolis 9, Indiana.

Dear Mr. Lauer:

I have your request for an opinion, submitted through Mr. Oster, chief clerk, concerning the duties of the Commission with reference to the disposition of money withheld from a construction contractor by reason of the filing of a claim under circumstances stated as follows:

The statement of facts submitted, together with the data attached, show that the claim in the amount of \$87.92 was filed by the Indiana Bell Telephone Company against the construction contractor on March 4, 1938, and notice of the filing of the same date was forwarded to the construction contractor. Your letter further states:

"There is no record in the files of this office that the claim was ever accepted or rejected by the Gross Construction Company.

"I forwarded a registered letter on March 29, 1945, see attached copy, for which I have a return receipt dated March 30, 1945, in which I proposed making payment to the claimant. However, the Acts of 1937, page 1209, Sections 17 and 18, are not clear to me. In lines 20 to 24 inclusive page 1210, Section 17 is stated, 'Within twenty (20) days of receipt of such copy said contractor shall either allow or reject said

claim, of which action said contractor shall notify said Commission in writing.'

"Thereafter is explained the procedure to be followed if the claim is rejected in whole or in part but does not appear to me to cover the procedure to follow in case the contractor neither accepts or rejects the notice, that is, fails to notify the Commission either way.

"I will appreciate your written opinion on this matter as to whether or not I can pay the claimant, the Indiana Bell Telephone Company, the amount of the claim \$87.92 for which they have submitted a voucher signed May 3, 1945."

The duties of the Commission with reference to the claim in this instance are governed by Section 17, Acts 1933, pages 1209, 1210 (Sec. 36-2917 Burns' Suppl. 1943). Since the claim was duly filed and notice given in accordance with the statute, the only pertinent provisions of the statute are those governing the duties of the Commission and the parties involved after the filing of the claim and the giving of the notice to the construction contractor. These provisions are as follows:

"* * * Within twenty (20) days of the receipt of such copy said contractor shall either allow or reject said claim, of which action said contractor shall notify said commission in writing. If said claim is rejected in whole or in part, said commission shall immediately notify by registered mail said claimant of such action. 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 principle, is similar to the Mechanics' Lien statutes of the State, and is designed as a supplemental method of insuring the payment for labor performed and materials furnished in the construction of highways, the chief difference being that, instead of providing for the attaching of a lien on the property affected, as in the case of the mechanic's lien, the act provides a method for impounding funds due the construction contractor to the extent of the claims filed. Hence the statute provides a method for speedy settlement of claims without litigation and, evidently to accomplish that purpose, it imposes certain procedure upon both the construction contractor and the claimant. It provides a method by means of which the construction contractor may avoid litigation by allowing a claim and also a method for forcing speedy litigation.

The statute does not contemplate that the contractor may remain silent, nor does it require action on the part of the claimant if the contractor does remain silent. The statute is so worded as to operate in favor of the contractor, after the filing of the claim and receipt of notice, only in the event he expressly rejects the claim within twenty (20) days. The claimant, in order to press his claim, is required to take no additional steps in the absence of a rejection, but in the event of rejection the claimant is required to file action within

ninety (90) days from the date of receipt of notice of rejection. Since the contractor failed to keep active the provisions of the statute in his favor, I think the presumption is that he recognized the claim as valid; and the amount thereof would stand on your records to the credit of the claimant.

This is true, I think, for the reason that the statute, as in the case of the Mechanics' Lien Act, should be strictly construed as to the statutory procedure in the filing and prosecution of the claim, but liberally construed in its application in the event the statutory requirements have been properly followed.

Potter Mfg. Co. v. A. B. Meyer & Co. (1908),
171 Ind. 513, 516;
Weber v. Ureher (1920), 73, App. 133.

Since it was to the advantage of the construction contractor to avoid litigation, there was no good reason to reject in the event the claim was valid. On the other hand, it was his statutory duty to reject if he considered the claim invalid. In my opinion, the construction contractor's statutory duty to reject stands on the same footing as the statutory duty of the claimant to file and prosecute the claim in case it is disputed.

In view of the fact that no action was taken with reference to the claim since the date of filing, I think, however, it was good practice to notify the contractor of your intention to release the amount to the claimant in the absence of any further showing, since by that method the possibility that the amount may have been paid directly by the contractor to the claimant is removed from consideration.

I am therefore of the opinion that, under the circumstances stated in your letter, you would be authorized to release the amount withheld to the claimant.