HIGHWAY COMMISSION, STATE: Rights of Highway Commission, highway contractors and creditors of highway contractors who have filed claims with Highway Commission.

April 8, 1938.

Hon. Earl Crawford,
Chairman, State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of March 7, 1938, in which you ask me for my official opinion on the following questions, to-wit:

"1. If the contractor fails to notify this commission in writing, within twenty days, allowing or rejecting said claims, does he have the right to file a rejection or allowance of said claim after the expiration of twenty days?

"2. If the contractor does not have the right to file a rejection or allowance after the expiration of the twenty days, what is the statute of the claim so filed?

"3. If the contractor neither rejects or allows the claim to this commission, in what position is the highway commission placed regarding payment to the contractor?

"4. If the contractor is permitted to reject said claim after the expiration of twenty days, does it then become the duty of the highway commission to notify said claimant of this rejection and suit be filed within ninety days from receipt of said notice of rejection, of which suit we must receive notice and upon failure of the claimant to file suit, are we at liberty to release any monies retained for the protection of said claim at the expiration of ninety days?

"5: If the contractor, upon notification of said claim being filed against him and within twenty days rejects the claim in part, does it become the duty of the highway commission to notify said claimant of rejection in part and must the said claimant file suit for the
total amount of his claim or can he file suit for just the
rejected portion?

"6. If the total amount of claims on file exceed the
amount of monies due the contractor and some claimant
obtains judgment, what is the position of the state
highway commission in such case?

The solution of these questions necessarily require a con-
struction of section 17 of chapter 256 of the Acts of the Gen-
eral Assembly of the State of Indiana of 1937, which reads as
follows:

"Any person, firm or corporation to whom any money shall
be due on account of having performed any labor or furnished
material or other service in the construction of any highway
or bridge in the state highway system or in the construction
or repair of any building or other structure for the state high-
way commission, whether the same was performed for a con-
tractor or sub-contractor, may at any time within sixty days
of the performance of the last of such labor or the furnishing
of the last of such material or other service, and at all events
within thirty days after the final acceptance of such improve-
ment, file with said commission a duly verified itemized state-
ment of the amount due such person, firm or corporation,
stating therein whether the same was performed for or
furnished to a contractor or sub-contractor, giving the name
thereof and the dates the same was performed or furnished,
the rate therefor or cost thereof and the character of such
labor, material or service, and the postoffice address of such
claimant. Said claim shall be filed in triplicate, and a copy
thereof shall be sent by registered mail by said commission to
said contractor and to the surety on the bond of said con-
tractor; Provided, That the failure to mail such copies to
such contractor and surety shall in no way affect the validity
of said claim. Upon the receipt of said claim said commission
shall retain out of the amount due said contractor the amount
of said claim. Within twenty 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 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 com-
mission 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 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 Gen-
eral Assembly for the year 1933."

The answer to question No. 1 is in the negative. I am of
the opinion that the commission could insist upon an allow-
ance or a rejection of a claim within the twenty-day statutory
period fixed by the Act; however, the act or rejection or allow-
ance of the claim is for the benefit of the commission and it
would have the right to accept the contractor's acceptance or
rejection of a claim filed at any time.

In answer to your question No. 2, will say I am of the
opinion that the rejection or allowance of the claim within
twenty days after it is filed, is for the benefit of the commis-
sion and they may waive the limitation fixed by the statute if
they choose so to do.

The delay in filing the rejection with the commission would
not have any effect on the claim. The purpose of rejecting
or allowance of the claim was made so by statute clearly to
expedite the clearing of the records of the commission with
respect to retaining sum of money due contractors, to satisfy
claims and require claimants to proceed with diligence in order
to avail themselves of the provisions of the statute.
Therefore, I think the twenty-day period within which the claim must be either rejected or accepted is directory and was for the benefit of the commission rather than of either the claimant or the contractor.

In answer to question No. 3, it is my opinion that in case the contractor refuses to either reject or allow the claim, that the commission should deduct the full amount of the claim from the amount due the contractor.

In answer to question No. 4, I am of the opinion that in case the contractor rejects the claim after the running of the twenty-day statutory period, it would be the duty of the commission to notify the claimant of such rejection, thereupon, it would be the duty of the claimant to bring suit and determine the rights of the parties so that the commission could then complete the payment on the contract as the law directs.

In answer to your question No. 5, will say it is the duty of the commission to notify the claimant of whatever action is taken by the contractor with reference to all claims filed against him. If the claim is rejected and the commission has notified the claimant of that fact, it then becomes the duty of the claimant to bring suit within ninety days to enforce his claim, in order to be protected under the provisions of the statute. A failure to bring suit within the time prescribed by the statute, will release the commission of any duty to the claimant.

Now, in case the claim is allowed in part, it is nevertheless the duty of the claimant to bring suit to enforce whatever rights he may have. If he elects to accept payment from the commission of the amount allowed by the contractor, I think he may do so. His failure to bring suit for the amount of the claim rejected within the statutory period would, in my opinion, relieve the commission of any further liability to such claimant on the claim so rejected by the contractor.

Question No. 6 is a little more difficult than any of the other questions submitted. I direct your attention especially to the following language found in the above quoted section, to-wit:

“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 such claimant, said commission shall pay so much of said amount so adjudged due said claimant to the clerk of the court rendering such judgment.”
It would seem from the reading of that portion of the statute, it would be the duty of the commission to pay so long as funds remain in their hands to do so on all judgments rendered according to their priorities. If, therefore, one judgment is prior to all other judgments, in my opinion, it would be necessary for the commission to pay that judgment in full provided it has sufficient funds in its hands to make such payment.

PUBLIC WELFARE, DEPARTMENT OF: Insane: In which county should insanity proceedings be brought? Meaning of legal settlement in insanity proceedings as between counties. Residence: The residence of an alleged insane person determines the jurisdiction of the proceedings for his commitment.

April 8, 1938.

Hon. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your letter of April 1, 1938, in which you ask an official opinion in regard to the meaning of "legal settlement" as found in sections 22-1201, 22-1207 and 22-1208 of Burns' Indiana Statutes, 1933, being Chapter 69 of the Acts of 1937, with the subsequent amendments thereto. You specifically ask:

"1. (a) Is the term 'legal settlement' construed in accordance with the definition as found in chapter 116 of the Acts of 1935, commonly known as the 'Poor Relief Law'?
(b) Does the term 'legal settlement' as used in the statutes in question mean the same as legal residence.

"2. In which county should insanity proceedings be brought, where the alleged insane person has resided in this state for several years, having lived in 'A' county during that period until four months ago, when he moved to 'B' county, where he lost his mind?"