

With respect to roads; the proceedings to acquire the land; the report upon the advisability of a road; the estimate of the cost; the description of the road; the survey and resurvey; the proper sanction of the voters or taxpayers; the proper formation and action of the boards or courts, etc., all must be in compliance with the statutes and laws pertaining thereto. In addition the actual preliminaries to the contract itself must be regularly and legally complied with:—A proper and sufficient appropriation or available funds; a proper advertisement for bidders; a proper letting to a proper party; a properly constituted board or official acting strictly in accordance with its or his authority; a proper bond for performance, etc. The contract itself must be in the required form properly executed, for the purposes allowed by the special statute, with proper persons entitled both to give and to have such contract and in accordance and in conformity with the preliminary reports, plans, specifications, survey, description, etc. As has been previously stated, failures, omissions, or negligence on the part of any of the state or municipal officials or agents in the above respects may cause the contractor to lose his compensation for work done and for benefits actually conferred by the contractor. There are some decisions and some statutes which are based on equity to prevent such unjust enrichment of such bodies at the expense of a contractor, but it is not safe to rely on such law in any particular instance. The general rule may be likened to the ancient rule of "caveat emptor" or, as it might be expressed here, "let the contractor beware." This warning, while primarily for the contractor, should be taken to heart by the official who is trying to do right and be honest, since usually he is the unfortunate party that causes the contractor's troubles and losses.

Contracts.—As we have already seen, most present day state contracts for road construction are not really "contracts," because of the inability of the contractor to sue thereon. In addition, I have also seen one state contract which stated that "all right or rights of any action at law or in equity under or by virtue of this contract and all matter connected with it and relative to the same are hereby expressly waived by the contractor." Practically the same result is accomplished by other states and especially by municipalities by the requirement that upon or before final payment the contractor must execute a release in full of all claims arising out of or by reason of the work done and material furnished under the contracts. Is this *good faith* in the dealings of men of average right-mindedness? I cannot conceive of but one answer to this question. The remedy then is simple. Provide either fair and disinterested boards of arbitration to pass upon a contractor's claims or provide a court of claims and eliminate any waiver of appeal to such arbitrators or court and the general release as a condition precedent to final payment from all road construction contracts. In other words, give the contractor a chance for a square deal upon a two-sided mutually agreeable contract. In passing, it might be noted that the United States Government is probably the worst offender in this matter of unfair and objectionable clauses, including that requiring a release, and it is setting a disgraceful example for the states and municipalities.

Satisfaction Clauses.—It is probably a safe statement that there is no state or municipal contract in use to-day which does not provide for the "satisfaction" of some official, board or engineer or all combined. Is this a necessary, fair and honest requirement in road construc-

tion contracts, or is it merely a club to compel the contractor to do what the official or engineer wants regardless of the plans and specifications?

In most states it has been properly held that this requirement merely necessitates work satisfactory to the mind of a reasonable man. Thus if the work has been performed substantially in compliance with the contract, the law will hold the official, engineer, etc., to be satisfied. With plans and specifications so clear and concise as they generally are in road construction, and especially with the work required to be done "under the direction" of an engineer and under constant inspection, it would seem that legal satisfaction would be presumed in 99 out of 100 cases, and hence the use made of this requirement in such states would be merely to bluff or bulldoze the contractor. In no way does it improve the requirements of the plans and specifications.

In such a state as Pennsylvania, where work can be held unsatisfactory by the official or engineer even though the plans and specifications are rigidly adhered to and where only honesty of purpose is required, the result of such a contract requirement may be heartbreaking. Under the guise of dissatisfaction I have known an official in that state to deliberately violate every essential provision of an agreement and to settle at his own figure with the contractor; or, in plain English, to rob the contractor not only of his contract right but also of thousands in money with no redress. A contractor who accepts state work in a state where this personal satisfaction of private taste in road construction is required must understand that he is at the beck and call of the official or engineer regardless of his contract requirements and conditions. What could the contractor in such a state do when he has to satisfy not only the engineer in charge, but the Road Commission and a state board? Suppose the work satisfied one and not the other two, or two and not the third party?

Our considerations recommend that "satisfactory" requirements be dropped from road construction contracts as either unnecessary, harmful or unfair and as not being a sanction for the expectation of good faith between men of average right-mindedness.

Contract Work.—In looking over many of the latest forms of road construction contracts it is noticeable that there is a very decided improvement in the manner and method of setting forth the contract work and specifying what is variously designated as alteration, addition, miscellaneous, or extra work, etc. Road work is now generally specified in various units and a price bid for each respective unit. In one such contract we find this definition: "Extra work is any work in connection with the execution or completion of the contract for which no price is included in the proposal sheets and contracts." Compare this simple and concise statement with a New York City form which had different requirements for ordering additional work as differentiated from extra work, the distinction not being stated and being such that there would be times when the average engineer or contractor would not know to which class the work belonged to. Result—the contractor would be refused payment for additional work done pursuant to extra work requirements or vice versa.

In the same regard why should a contractor, as is now frequently demanded, be responsible for unknown or underground conditions? Just lately in New York City a paving contractor found a lot of rock above grade which should have been taken out by a prior grading contractor. Under notice to bidders to examine the site, etc., the