

The CALIFORNIA LICENSED CONTRACTOR



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Mr. Contractor: Are You In Business For Yourself?

It is a fact that many and possibly a majority of the smaller contractors are today making far less per year than their competent employees. In addition to this, Social Security is now providing advantages for the employee which are denied the employer, and therefore further depreciate the position of the contractor. Labor, for the past several years, has enjoyed a rather enviable position in regard to its income as compared with the situation of the smaller contractors and sub-contractors.

During the peak of the depression labor apparently enjoyed the same superiority. While many erstwhile journeymen then entered the contracting business as they were no longer furnished employment by the contractors for whom they had previously been working, at the same time the tremendous drop in registration of contractors shows that there was a great exodus of contractors from the contracting field.

It certainly may be assumed that these contractors were not able to enter other fields of industry in great numbers. They were not skilled or learned in other lines of business; other lines require capital of which they had none; the depression hit all lines of business a hard blow and change-overs were not likely to lead to profitable lines. The conclusion must be reached that these contractors who dropped out of contracting remained in some branch of the construction industry. That field was employment as journeymen, which must have appeared to them to offer better returns.

A movement of this sort is freely predicted by many men well informed as to present conditions. They feel that the preparedness work will draw many contractors out of the contracting business, because of assurance that good salaries and wages are in sight, along

with steady employment, for some time to come. In addition it is predicted that construction will turn from residential work toward commercial and industrial in an increasing tide, the turn having already become manifest. Contractors with no experience in management of commercial work, and with no background of good will in industrial fields with which to commence, will prefer to accept employment with larger contractors rather than undertake to build a new business.

It is fortunate that the present favorable position of the employee in the building business makes it possible, and maybe beneficial, for marginal operators to change. As pointed out by well informed men in California, the present position of labor is better than has been the case for some time. This seems like a stable condition, as labor has not taken any broad or general steps to raise prices due to a threatening shortage of skilled mechanics such as we experienced from 1916 to 1920. In many large centers of the State the prevailing wage for journeymen in the various trades has run from \$1 per hour to \$1.50-\$1.66 for some time. Supervisorial positions have been comparably paid, with an increasing number of the latter type of positions being opened as commercial work has picked up impetus, thus providing a good chance for promotions. There will be considerable readjustment among employees for some time, probably. There appears to be an opportunity for men in less favored divisions or locations to better themselves with a minimum of risk. Labor organizations generally are recognizing the importance of making it easy for skilled mechanics to enter the construction industry in order to be able to provide adequate skilled mechanics for the nation's call. Fences do not appear to have been thrown around the organizations, and consequently, the man who

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is properly qualified can today quickly secure employment under the most advantageous conditions, and in a line of work which contributes a vital necessity in our national program.

This is a healthy situation, and the recognition of it may provide the impetus for many men to put into their work that additional effort that leads upward, and that serves to stimulate others to also do a better job for themselves and their country. Changes long contemplated are now most likely to be made with industrial output, plus housing for industrial workers at war-industry centers relying upon the worker in our construction business today for the means to work and to live near the work. Every force that increases output in construction work becomes a service to the people. The output of each individual plant, employee, and craft is a matter for study. The shifting back and forth between the contracting and the employee field, will be noticeable—the bulk of change will be of contractors into stable employment, according to predictions.

A journeyman who has elevated himself into the ranks of the contracting field in most cases assumes that he will, within a reason-

able length of time, be securing a sufficient volume of business so that he will no longer work with the tools himself. If he must work with the tools, then like the average working contractor, he loses the advantage of social security and frequently makes less per annum than his own journeymen are paid. His business hours and worries increase greatly. The move has injured, rather than benefited him. A stream of contractors are constantly recognizing the fact that a change of this sort has so resulted, and are dropping back into the rank of employees.

A study of the situation shows that in almost every line in the construction industry the same situation exists. Contractors who are necessarily working with the tools themselves can only employ sufficient men and can only operate sufficient jobs so that they can be working with all of their men all of the time, in order to set a pace for these men. This means, of course, that they must devote their entire outside time to handling their business negotiations, solicitation of work, and keeping of records and books. The volume of work is necessarily so small that expansion into the larger fields by use of profits is unlikely. In other words, it seems to be very hard for the contractor to build up beyond the gap that occurs between the volume of work that he can personally do and at the same time supervise, and the volume of work where he gives all of his time to supervision.

An executive of a paint store in California who has been very close to the field operations of the painting industry for a number of years makes the following observation. Says he, "Painting contractors who employ two or less men and work with these men so that they are setting an example as to industry, and who are supervising the work of these men constantly are making a fair living. Painting contractors who have sufficient volume of business to employ over fourteen men, are today also making a good business out of their contracting, if they are properly organized, capitalized, and know their line and can handle men. Naturally, they must have estimating ability and all that goes with the make-up of a successful business man.

"When a man has over fourteen men working, his supervisory time is spread over sufficient jobs and he is able to hire competent foremen to personally watch each of the jobs. His business is well set up.

"But in the field between, it is almost impossible to find a painting contractor who is making even a decent living, not to say a living comparable with that of a competent

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"Right Is Right, and Wrong Is Nobody's Right"

By J. H. BALL, Secretary, Associated Tile Contractors, Inc., of Southern California

With the steady increase in government financing of building has come a closer coordination of federal and state laws to supervise and regulate building practices.

This means that every contractor, for his own welfare and the welfare of his industry in general, must be ever more aware and more observant of building requirements as prescribed by law.

To ignore these requirements, either wilfully or through lack of proper information, can prove costly to contractors, not only in reputation, but in time and money as well. It is evident that continued or increasingly flagrant violations will result in more drastic action.

For the contractor, there is no excuse for not being familiar with the laws governing his operations. These are made available to him through publication and through his craft association. All that is required to acquaint him thoroughly with all regulations is his interest and his cooperation.

The "*California Licensed Contractor*," appearing quarterly and mailed without cost to every licensed contractor, is issued for the purpose of informing the contractor of existing laws, of changes and new developments, and to interpret for him the statutes. Any person who carefully reads and studies each issue will readily realize that an honest and highly efficient purpose motivates the publication of this journal.

Close to the contractor and ever active in his behalf is the craft association. It might be advisable, for the benefit of the skeptical and for the information of those who are not thoroughly familiar with the scope of the operations of these organizations, to examine some of the various ways in which they function to assist their members and the industry as a whole.

Protecting Contractors' Interests

In the past several years a number of laws have been placed in the federal and state law books which directly affect all contractors. These laws are probably necessary under our present state of affairs, but they do make it more expensive to do business. I believe all contractors will cheerfully pay, providing they know their competitors are also paying, required taxes.

But, no contractor can know what all contractors are doing in this respect, and he has

good reason to doubt that his competitor is working under these same handicaps. Who is going to take time and see that others are helping carry the burden?

The contractor, as an individual, can not do it, so it follows that only his craft association can help to equalize these heavy costs. If the association did nothing more than to provide this equality of contracting opportunity, it would be worth all the support of the industry.

During the past year I have observed situations existing in certain cities or municipalities in which a laxity of enforcing building codes and laws exists. The State Contractors' inspectors are sometimes helpless to correct these abuses when found, and right here is another place in which your association can be of value.

Protection Is Not All

Protection itself is not the only object of organization. It is a poor association whose work is entirely negative, and fortunately there is a job to be done that is both positive and constructive.

It is to the contractors' best interests that we all revitalize our interest in our State Contractors' License Board, which is second to none in the United States. We should cooperate and strengthen its programs whenever possible. For example, it may be that they will propose amendments to the present state contractors' laws to the state legislature for adoption. We should carefully investigate such actions when ready for presentation, and if they are found to be correct, we should wholeheartedly support them, as a body.

If our laws are not sufficiently strong enough, let us bring it to the attention of the Registrar who, in turn, will cooperate, but don't let us rest there. Our support before law-making bodies will also help materially.

It is easy to criticize public officials' trade associations for failure to do all the things expected of them or for being too conservative, and sometimes too aggressive. But criticism comes with poor grace from such sources when they refuse to meet them on friendly terms. Suspicion and distrust always confuse and never help business.

We are in a position to offer assistance so that we may all enjoy in a larger measure a program of "right is right, and wrong is nobody's right."

Suspensions and Revocations

From August 1, 1940, to Approximately
October 15, 1940

- BULLOCK, AMOS, Pasadena, lic. no. 50949, electrical—suspended pending further order.
- CRUZE, FRANK, Bellflower, lic. no. 4224, cement and concrete—suspended for 90 days and until restitution.
- DAVIDSON AND DAVIDSON, San Leandro, lic. no. 66359, general building—suspended for failure to answer complaint.
- DE VRIES, R. T., San Pedro, lic. no. 63687, general building—suspended pending further order.
- FUPTTE, C. E., Los Angeles, lic. no. 62221, speculative building—revoked.
- GATES, WILLIAM A., Vallejo, lic. no. 60442, general building—suspended until restitution and for an additional 120 days.
- GIANGREGORIO, VITTORIANO, Los Angeles, lic. no. 51496, plastering—suspended pending further order.
- GLASS, A COMPANY, Los Angeles, lic. no. 55960, plastering—suspended for three months.
- HILL, ROBERT L., Glendale, lic. no. 39932, general building—suspended pending further order of the Registrar.
- LINDSAY, WESLEY B., Bakersfield, lic. no. 62351, general building—revoked.
- MOFFETT, CLIFF H., San Jacinto, lic. no. 52541, electrical—suspended for 90 days.
- MORGAN, H. S., North Hollywood, lic. no. 59586, general building—suspended for 60 days.
- MURDOCK & FOSTER, Los Angeles, lic. no. 61842, general building—suspended pending further order.
- PAYNE, HOWARD, Los Angeles, lic. no. 63844, general building—suspended pending further order.
- PEERLESS PLUMBING CO., Los Angeles, lic. no. 5450, plumbing—suspended for 60 days.
- ROBERTS, SAMUEL H., Long Beach, lic. no. 13893, speculative building—suspended pending restitution and for 90 days thereafter.
- ROPER, ROBERT L., El Monte, lic. no. 61956, plastering—suspended pending further order.
- SCHULTZ & MARK, Los Angeles, lic. no. 59261, plastering—suspended pending further order.
- TAYLOR, GEORGE, Pico, lic. no. 6256, general building—revoked.
- TRIANO, MANUEL M., Redwood City, lic. no. 67792, miscellaneous specialty—suspended for failure to answer complaint.
- VON FLECKENSTEIN, GEORGE J. WILHELM, La Crescenta, lic. no. 63003, general building—suspended for 60 days.
- WALKER, CHARLES W., Indio, lic. no. 42657, cement and concrete—suspended pending further order.
- WALSH, JAMES H., Pasadena, lic. no. 20612, general building—suspended for 90 days.
- WIGGINS, L. L., Inglewood, lic. no. 39669, cement and concrete—suspended for 90 days.

A "Handbook for Licensed Contractors" is as indispensable to a contractor as tools are to a craftsman. You should secure your copy from the Supervisor of Documents, State Capitol Building, Sacramento. Price \$1.00 plus 3 cents tax.

General Contractors Examination Became Effective November 1

Since the adoption of the examination for contractors on October 9, 1939, the Contractors' State License Board has been giving the same examination to all types of applicants whether they apply for a license as a general contractor or for one in one of the various sub-crafts within the construction industry.

It has been felt by the Board that this procedure has accomplished a great deal, but that the best interests of the public and the industry would be better served were an examination of greater scope and magnitude given applicants for a license as a general contractor.

In determining the type of examination that should be constructed, the Registrar was instructed by the Board to send a questionnaire to organized groups within the industry, wherein they were asked to give the Registrar their thoughts as to what the examination should embrace. The response was unanimous and the plan met with their wholehearted approval. It was interesting to note that practically identical opinions were shared by all as to the proper type of examination that should be given.

The examination will embrace the following laws—State Housing Act, Workmens Compensation Insurance Act, State Labor Laws, Health Laws, Mechanics Lien Laws, Social Security Laws, Unemployment Insurance Act and the State Safety Laws as well as a thorough knowledge of the rudimentary administrative principles of the contracting business. In addition a plan will be supplied the examinee from which he will be asked to submit a bid. For this, material and labor costs will be set forth as well as specific items of overhead and a percentage of profit.

The general contractor is really a "master builder" as he was known not so many years ago. His dealings are directly with the public and his position is that of a fiduciary. It is evident that his knowledge and capabilities should be greater than those possessed by one seeking a license in one of the sub-crafts.

The Contractors' Board contemplates shortly the adoption of rules that will prohibit one licensed as a sub-contractor to do work that is the work of the general contractor. Also, the examination program of the Board contemplates the adoption of rules wherein a sub-contractor will be given an examination covering the craft under which he desires to be licensed and will be restricted solely to operations within this craft.

Confusion of Rulings on Status of Labor to Be Clarified

On September 12 and 13, at the invitation of the Registrar of Contractors, representatives of the various State and Federal departments interested in determining the status of borderline labor contracts, met at the Contractors' Board office in San Francisco for a conference.

Representatives of the organizations were as follows:

Albert G. Motsch, Appellate Division, Dept. of Employment;
 H. C. Carrasco, Labor Commissioner;
 Chas. Dreyfus, Attorney and Deputy, Labor Commissioner's Office;
 Herbert L. Williamson, Ass't Attorney, Industrial Accident Commission;
 Arthur Miller, Regional Attorney, Region XII, Social Security Board;
 James Norris, Ass't Regional Representative, Bureau of Old Age and Survivor's Insurance;
 Clarence Linn, Claims Attorney, Bureau of Old Age and Survivor's Insurance;
 J. G. Bretherton, Manager, Sacramento Field Office, Bureau of Old Age and Survivor's Insurance;
 Allen Miller, Registrar, Contractors' License Board;
 Glen V. Slater, Assistant Registrar;
 R. S. Bowdle, Deputy Registrar;
 N. J. Morrissey, Deputy Registrar;
 Louis F. Erb, Deputy Registrar;
 W. A. Evison, Deputy Registrar.

It was the consensus of opinion that there is a unity of interests among the organizations to attempt to proceed in like manner upon similar cases. It was generally agreed that it is difficult to establish the exact relationship between a contractor and men that he employs to perform labor only under a number of different types of arrangements.

Recognition of the fact that the confusion of rulings at present was causing difficulty to the construction industry, was unanimous. A desire to remove the source of this trouble in order that contractors might know their exact position and not run any unnecessary risks, or be overburdened with work because of a lack of definite understanding was expressed by each of the representatives.

It was agreed that a further meeting should be called by the Registrar at which time representatives of these various jurisdictions would be present. In the meantime the different governmental agencies would compile their own rules and decisions upon cases of the sort in question in order that they might be prepared to seek a common ground upon which to proceed in the future.

Much confusion has existed in the contracting industry itself because of the inability of contractors to definitely determine

whether or not the parties they have been employing were employed by independent contract or wages, since wages may be paid in almost any form including a lump sum.

Found on the Back of A Check

We are indebted to architect Russell deLappe of 1901 Downey Ave., Modesto, for the following suggestions which set forth a manner of avoiding disputes in regard to proper credit of payment.

On segregated contract jobs, Mr. deLappe has found this method to be very successful and it is probably a system which may be applied equally well to the operations of a general contractor who might desire to utilize it.

Upon the back of Mr. deLappe's checks which are checks issued against the owner's fund, occurs the following:

Endorsement of the within Check acknowledges receipt of,

(Amount)

as payment

(Describe which payment)

to (Name of payee)

on building and/or lot situate

(Describe job or location)

for labor and/or material as follows:

(Give such description as may be advisable)

Handbook for Licensed Contractors

The great demand for the "Handbook for Licensed Contractors" by members of the construction industry has caused the State Supervisor of Documents to make an additional run of this publication.

Sales have exceeded the most optimistic expectations of the Registrar and his staff, and this is very gratifying as it is felt that the prequalification program adopted by the Contractors' State License Board is achieving its purpose in that applicants for license and present license holders are desirous of better knowing the laws that directly relate to their daily operations in the construction business. The Handbook contains all such laws.

Copies may be secured from the Supervisor of Documents, Capitol Building, Sacramento. Price \$1.00 plus 3¢ tax.

Do You Know That—

By GLEN V. SLATER, Assistant Registrar

(In each edition of the "Licensed Contractor" I will attempt to give in this column excerpts from the various laws that directly affect your contracting business. For this edition, I have chosen the Social Security Act.)

—Contractors employing one or more wage earners are subject to the taxing provisions of the Federal Insurance Contributions Act which provides for taxes supplementary to the Social Security Act. (Agricultural labor contractors excepted.)

—Each "employer" as defined by the Social Security Act is required to obtain an Employers Identification Number. (Use application form SS-4.)

—New identification numbers should be secured whenever there is a change in the ownership or when the employer moves from one Internal Revenue District to another.

—Identification numbers identify the employers account with the Collector of Internal Revenue and should appear on each quarterly tax return. These identification numbers should not be confused with the "Employer Account Numbers" assigned by the California Department of Employment used in connection with making quarterly returns to the state when subject to the California Employment Act.

—Wage earners in covered employment are to receive credit for all wages earned either in the form of cash or kind such as board, room, or materials.

—The first \$3,000 paid in wages is taxable under the Federal Insurance Contributions Act although they may have been paid by several employers.

—Temporary or part time employees are covered by the Social Security Act.

—All employees regardless of age are covered by the Social Security Act when working in covered employment.

—Employers are required to keep for each employee payroll records showing a. Name, b. Address, c. Account Number, d. Dates worked and paid, f. Tax deductions made. (Quote Internal Revenue Law Page 87-88—Regulation No. 106.)

—Account numbers should be obtained when the employee starts to work.

—Names and account numbers should be copied from the account number cards. Do not trust to employees' memories.

—When an employee can not show his Social Security Account Number card, have him complete in ink an SS-5 application over his signature.

—By writing "Notify Employer" on the application before sending the SS-5 application to the Social Security Board Field Office servicing your area, that office will see that you are advised of the account number so that you will not have to depend on "floaters" to bring their account numbers to you later. Be sure the employer's name and address is on the SS-5 application.

—Employers are required to furnish receipts to employees upon termination or at least once in any four calendar quarters, showing employer's name, employee's name, total wages during such period, tax deductions, period covered. Penalty \$5.00 for each violation.

—Employees upon attaining age 65 or widows and other relatives of deceased wage earners should be advised to get in touch with the nearest Field Office of the Social Security Board regarding claims that

can be filed by eligible persons for Federal Insurance payments.

—Deductions of 1 per cent should be made from the wages of each employee for the years 1940 through 1942. Employers add 1 per cent to the amount deducted from the employees.

—The 2 per cent tax is paid quarterly to the Collector of Internal Revenue of your district on tax form SS-1a during the month immediately following the close of the calendar quarter.

—The complete name, account number, and wages paid each employee are required on the quarterly tax return form SS-1a.

—Services by an individual for his son, daughter, or spouse, or by a child under 21 for his father or mother is not covered by the taxing provisions of the Social Security Act.

—All employees not specifically exempt are covered by the Social Security Act. Those exempted are agricultural labor, domestic servants, employees of city, county and State governments or their agencies, nonprofit organizations such as churches, crews of foreign vessels, employees of foreign governments, and casual labor.

—When you believe one of your employees is exempt be sure to obtain a ruling from the Collector of Internal Revenue in writing. (i.e. alleged subcontractors.)

CORRECTION

—In the August issue of the "Do you know that" column I should have said "By 'prevailing rate of wages on public works' is meant the *prevailing* rate of wages paid for work of a similar character in the locality where the work is to be done."

GLEN V. SLATER.

Prominent Bay Area Contractor Killed in Auto Accident

George Windsor, a prominent contractor of Alameda County passed away on October 14th, his death resulting from an auto accident when returning to California from Virginia where he had been vacationing. Mrs. Windsor, who accompanied him, was severely injured; however, she is now improving.

Windsor, aged 46, was born in Custer City, South Dakota, and spent his boyhood in Oregon. He came to Oakland in 1915, and since that time has been actively engaged as a general contractor in the East Bay area, constructing over three hundred homes and developing many high class subdivisions.

Mr. Windsor was the immediate past president of the General Contractors and Builders Association of the East Bay and an active director of the organization at the time of his death.

Windsor gave unselfishly of his time to make for better standards and ethics within the industry.

The Contractors' State License Board, its Registrar and Staff, all of whom knew Mr. Windsor through his many activities, express their sorrow to his family and host of friends.

Why Licenses Are Suspended or Revoked

Editor's Note: This is the fourth of a series of fifteen articles to be run in a like number of issues of the California Licensed Contractor. Each will be preceded by a brief statement of all of the sections of the Business and Professions Code that constitute cause for action against a contractor's license. In each of the articles one of the sections will be featured by an explanation and by examples taken from our files.

The sections are Nos. 7106 to 7120 inclusive, and are grouped in Article 7 of Chapter 9 of Division III of the Business and Professions Code of California.

Power of suspension for violation of these sections is given the Registrar in Section 7090 of the same article, which states, "The registrar may upon his own motion and shall upon the verified complaint in writing of any person, investigate the actions of any contractor within the State and may temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

- Consolidation** 7106. The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.
- Abandonment** 7107. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action.
- Misuse of funds** 7108. Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose constitutes a cause for disciplinary action.
- Disregard of specifications** 7109. Wilful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications constitutes a cause for disciplinary action.
- Violation of laws** 7110. Wilful or deliberate disregard and violation of the building laws of the State, or of any political subdivision thereof or of the safety laws or labor laws or compensation insurance laws of the State constitutes a cause for disciplinary action.
- Preservation of records** 7111. Failure to make and keep records showing all contracts, documents, records, receipts and disbursements by a licensee of all of his transactions as a contractor and open to inspection by the registrar for a period of not less than three years after completion of any construction project or operation to which the records refer constitutes a cause for disciplinary action.
- Misrepresentation** 7112. Misrepresentation of a material fact by an applicant in obtaining a license constitutes a cause for disciplinary action.
- Violation of contracts** 7113. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action.
- Unlicensed persons** 7114. Aiding or abetting an unlicensed person to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action.
- Violation of this law** 7115. Failure in any material respect to comply with the provisions of this chapter constitutes a cause for disciplinary action.
- Fraud** 7116. The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action.
- Personnel variance** 7117. Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

7118. Knowingly entering into a contract with a contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action.

Lack of reasonable diligence 7119. Wilful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

Withholding money 7120. Wilful or deliberate failure by any licensee or agent or officer thereof, to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

Departure from plans and specifications is the subject matter of this, our fourth series of articles explaining in detail the causes for disciplinary action, namely the suspension or revocation of contractors' licenses, under the Business and Professions Code of the State. The section reads as follows:

7109. Wilful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications constitutes a cause for disciplinary action.

The first few words of the section state substantially, that either wilful departure from plans or specifications, or wilful disregard of plans and specifications is cause for action. There is a distinction to be studied between the phrase "departure from" and the words "disregard of." The first seems to imply a purposeful act, knowingly performed; the latter, a form of neglect.

"Departure" from plans and specifications might occur where a party with plans and

specifications before him deliberately and intentionally deviated from construction as called for by plans and specifications. Another party knowing that there were plans and specifications governing a particular job might not trouble to acquaint himself with the plans and specifications, and thereby commit an error. In the latter case the contractor would go ahead with the construction work without ascertaining whether or not he was complying with the plans and specifications. The error would occur, and his first knowledge of it would come after the particular portion of the building had been built, or installed.

In either case a cause of action arises if the plans and specifications have not been followed providing the other necessary elements or conditions called for by this section are present. These other elements are as follows: The error must be "material"; the error must be "prejudicial" to another; the error must have occurred "without the consent of the owner" or the owner's representative, or of any other party entitled to have the project completed in accordance with plans and specifications.

There is, of course, a safeguard for the contractor in that the departure from plans or specifications does not become a cause of action against his license if it occurs without his knowledge provided the contractor, later learning of the error, corrects it.

On the other hand, it is hardly any defense for a contractor to state that he did not know of the disregard of the plans and specifications at the time the work was done and therefore refuses to correct them after the discrepancy is called to his attention. If it is physically possible—and it usually is—his obligation is to correct.

In a case some two years ago in central California, a contractor was charged with disregard of plans and specifications. While there were some items that were not physically constructed in accordance with the dimensions shown, the principal complaint was that the workmanship fell below the standard specified. After a hearing before the Registrar, the complaint was held to be justified and the contractor's license was suspended.

The contractor appealed the case to the Superior Court of the county in which the construction was done. The contractor contended to the Court that the departure from plans and specifications may have occurred but that it was not done with the knowledge or consent or desire of the contractor and that he therefore was not responsible. The contractor took the position, therefore, that he had no responsibility under the Contractors'

License Law, and that any remedy must be secured by a civil suit.

The evidence that the State presented in order to sustain their judgment of suspension convinced the Court that the class of workmanship was so far from that called for by the plans and specifications that the contractor could not possibly have been on the job during construction without noticing what had occurred. For instance, it was proved that bulges in the walls occurred to such an extent that any person, even without construction skill, passing down the halls of the house, would have noticed the untrue contour. The amount of tolerance ordinarily permitted in that type of construction had been exceeded greatly. In another instance, there were two matched mirrors in two doors in one bedroom, and the doors were side by side. One of the doors was out of plumb by about an inch, and because of the nearly parallel lines made by the mirrors and by the two doors themselves, the discrepancy was very glaring. The position of the State, sustained by the Court, was that the contractor, who admitted that he was personally in charge of the job, and that he made frequent visits, could not possibly have avoided seeing this error. True, it was admitted that the improper workmanship probably had occurred before the contractor knew of it. However, it was held that the contractor had the ability and authority to remedy the errors and his failure to correct them constituted a ratification and approval of the work that had been done by his employees. The Court sustained the Registrar's decision.

What constitutes a "material" departure from plans and specifications is, of course, something which may be argued at great length. In some instances the amount of monetary injury that is suffered, the injury being measured by the cost which would be necessary to replace the improper work, would be a measure. In other cases, however, a deviation might cost hundreds of dollars to rectify and yet it would not be material.

For instance, one of the Board's inspectors checked a job of residential construction where the position of a door leading from a hall into a bedroom was changed by the contractor from the position shown upon the plans and specifications. By changing the door in the bedroom he did not alter the available wall space, nor did he make any other change which would in any way injure or lessen the value of that room. The change did not affect the hallway. The contractor on his own volition changed the door because in its original location it was directly opposite the door leading from the living room into the

hall. In that position, persons sitting in the living room, if the hall door were open, could look directly into the bedroom. By moving the bedroom door that disadvantage was taken care of and the value of the house was enhanced. The owner attempted to have the contractor held for departure from plans and specifications and the Registrar ruled that the departure was not "material." Had the aesthetic value of the house been injured, or had the owner shown a sensible reason for wanting the door in the original position, the departure would have been material, of course.

There is no possible rule to lay down which will state what does or does not constitute a material departure from plans or specifications. Likewise, it is not possible to assume that any particular public official has certified as to compliance with plans and specifications because he has passed the job as meeting his own requirements. Contractors frequently erroneously contend that if a job is approved by a building inspector and by the inspector of the financial institution making the building loan, they therefore are relieved from any complaint the owner may bring for departure from plans and specifications.

An inspector for a building and loan association, whom we can for the present assume has had sufficient experience to be an expert on construction matters, is always permitted to testify, after an inspection, as to whether or not a job meets plans and specifications. But his testimony is not conclusive. Experts in all lines frequently disagree and it is more than likely that two experts going over a particular job with a fine tooth comb would not reach the same conclusions as to the class of workmanship that was used throughout that particular job.

Consequently, if a complaint is brought against the contractor for departure from plans and specifications he should not rely upon the fact that the job has been passed by someone having an interest in it or charged by law with inspecting it, such as a building inspector. He is permitted to bring in these gentlemen and to show by their expert testimony that the job has been completed in accordance with plans and specifications. The owner may present other experts who will differ. The testimony of all is admissible and will be duly considered.

Execution and filing of a notice of completion is not conclusive proof of a waiver of plans and specifications, or of complete satisfaction. Many contractors assume that the execution of this document does constitute approval of the job by the owner. On the other hand, the position is taken and rightly,

it would appear, that the filing of a notice of completion is done for the purpose of establishing the limits upon lien rights and the document does not have the legal effect of freeing the contractor from liability for previous failure to comply with the plans and specifications. The notice, however, may tend to show the owner's knowledge of conditions.

Proceeding with our study of this section, we come to the words "—without consent of the owner or his duly authorized representative." There is no reason why a departure from plans and specifications should not be made with the oral consent of the owner because the oral consent is just as binding upon the owner as is his written consent. Of course, if a dispute should arise, it might be more difficult to prove that the owner orally agreed to the change, than if the owner's signature to a change order could be presented. Whether or not the additional protection of a written order is worth while is a matter of business procedure for the contractor to consider. Certainly, everyone who has had any broad experience in the construction industry understands and agrees that a very large proportion of disputes over jobs arise through failure of the contractors to insist upon the owners giving written memoranda.

Where an owner has employed an architect or someone else acting in a professional capacity to act as supervisor upon a job, the contractor should be able to rely upon this party's consent to changes of the plans and specifications. If, however, the contractor has no written authority from the owner showing that this party is acting as the owner's agent, a rift might appear. In case the agent for the owner approves the change and the owner later disapproves, the owner may take the position that the agent was not authorized to act for him and may refuse to abide by the inspector's approval. In that case it becomes necessary for the contractor to prove in any way possible that the agent was empowered by the owner to enter into agreements with the contractor. The contractor should secure written authorization from the owner, appointing this agent to enter into change agreements.

The section goes on further to state that contractors should not depart from plans and specifications "—without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications."

There are many contractors who perform work upon jobs where there are parties other than the owner interested in compliance with

the plans and specifications. The contractor may be doing business with the lessee instead of an owner. The contractor may be a subcontractor who has taken the contract under a general contractor and certainly he is responsible to the general contractor for compliance with the plans and specifications, in so far as his own portion of the contract goes.

There are other less frequent instances where the contractor is required to comply with the plans and specifications for the benefit of a party other than the owner. Any contractor will recognize these situations and where they do occur will see that no changes are made without having protected himself by securing definite consent of all such parties having an interest.

The problem often arises of determining whether or not a condition of some sort actually constitutes a "specification." A formal contract may state certain conditions under which a job is to be constructed and then specifications and plans may also be provided. Thus, if the contract itself says that the workmanship and materials shall be the best available, the contractor becomes bound by these terms of specification even though they are not written in the specifications also. The fact that the phrase may be omitted from the specifications does not permit him to use workmanship or materials which are not the "best available." And what a strong, broad term that is!

The phrase "first class workmanship" and "best of materials available" are used so commonly by contractors that they are proper subjects of study. Those words taken by themselves, mean that the contractor is obliged to use the very best of labor that can possibly be secured and it also means that he must purchase and use the very best of materials available except in cases where his specifications definitely permit the use of a lower grade. Price can be no bar. Relation of cost to utility can not be considered. Common practice is not the guide.

Where phrases of this sort are used in connection with construction of low priced jobs even where the contractor would not be consistent in using the "best" of materials and workmanship, he nevertheless has bound himself by these clauses to use none but the best.

Not long ago, a contractor who has been building a number of houses monthly in a particular locality, signed a new contract with an owner after having shown this owner a number of jobs already completed. This contractor used phrases similar to those above. Notwithstanding the fact that he built this house for the owner and used the same class of workmanship and materials that the owner

had seen in the other houses, a complaint was later made against the contractor for failure to use the best of workmanship and materials. The case was tried in civil court.

As a matter of fact, the owner secured a job that gave him very good value, indeed, and the workmanship and materials were entirely consistent with the price of the project and common practice in the community where it was built. Nevertheless, the owner sued the contractor and was able to prove in the civil court that the materials and workmanship were not the best available, and secured a judgment of nearly \$700.

Frequently a contractor enters into an agreement which is outlined by a contract and by plans and specifications. But the three documents are not sufficiently complete to be entirely understandable on some point. If a dispute arises, the parties have the right of showing by other evidence than the written documents what the agreement was between them on the ambiguous point. If the plans and specifications were prepared and issued by the contractor, and the dispute arises where the contractor has profited by a gap in the documents, it is safe to assume that the contractor will be held to be in the wrong, providing the actual workmanship in question was below standard. In other words, the contractor who prepares plans and specifications for an owner is held responsible to the owner for the architectural services rendered in connection with the construction program and he must assume the burden of responsibility in case of difficulties arising because of neglect or carelessness in the preparation of plans and specifications.

It is common for specifications to provide that jobs shall be constructed in accordance with the minimum construction requirements of certain public agencies. Where a clause of this sort occurs in the contract document the requirements of the public agency are immediately made a part of the plans and specifications just as if set forth in full. If the contractor is not familiar with or does not have a copy of the requirements of such agency, it is his obligation to secure them and to familiarize himself with them and to abide by them. Lack of familiarity is no defense for failure to comply.

If the specifications provide that a contractor shall comply with local ordinances, then he certainly must comply with them and his failure to do so is the subject of a complaint by the owner. He is, of course, also subject to loss of his license by complaint of any other proper party purely for disregard of the building ordinance. The point is that

(Continued on page 13)

QUIZZERS' COLUMN

Q. Is an oral contract legal?

A. Anything not prohibited by law is legal. If you mean to ask if an oral contract can be legally enforced, as in the case of a written building contract, the answer is "yes."

Q. I understand that you can not enforce or collect upon oral contracts in court. Is that correct?

A. That is not correct. It may be, and in fact often is much harder to establish the terms of an oral contract and therefore the opinion has erroneously been given that oral contracts can not be enforced.

Q. If a case is up before the Registrar and it is based upon an oral contract, and the parties argue about the terms of the contract, how can the Registrar reach a decision?

A. The Registrar, after hearing all evidence, might not be able to reach a decision. In most cases, however, after considering everything that is pertinent to the case, the Registrar can reach a conclusion as to what the terms of the agreement were. In connection with proceedings of that sort the Registrar is in the same position as the judge of a court. Most cases get to court because there is a dispute with both sides believing that they can convince the court that their description of the facts is correct.

Q. If I give a general contractor a bid to do the flat work on a new job for \$320, but do not sign any contract, can he refuse to pay me over \$320, if it later turns out that the job costs me more than that?

A. Yes. He would not have to pay the excess. You had an oral contract for \$320, based upon your bid. You are bound by that contract. An oral contract is not an "estimate" under which a variation in the cost can occur.

Q. I am a general contractor. I figured the lumber on a job and submitted the list to a lumber company. They gave me the total price for this lumber. My lumber ran over that price because it was necessary to use more lumber. Must I pay for the difference since the lumber company could have checked the plans and seen if my figures were correct.

A. Certainly the lumber man did not assume responsibility for the correctness of

your figures nor responsibility for economic use, and unless you had a definite agreement with him to supply all of the lumber necessary on the job, for a certain figure, you could not hold him. After all, you are the contractor, the lumber company is not.

Q. I am a small sub-contractor and my material dealer figured a job for me. I submitted a bid based on their figures and it later turned out that there must have been an error because I took quite a licking. I couldn't pay for my material. Should not the material dealer stand the loss or at least help me?

A. This question is purely civil in nature. The Registrar does not have jurisdiction over material dealers. We must therefore decline to answer. When you have to rely on others to figure your jobs you apparently are getting on pretty unsafe ground. A contractor should be able to do his own figuring himself or by his own employees—that is one of the most important and necessary forms of knowledge a contractor should have.

Q. I have a man who gives me an oral figure for the labor to paint my jobs and I furnish the materials. Our agreement is that he is to get \$7 a day, but that the total cost of the job is not to exceed a certain sum. Is this a contract or is he an employee of mine?

A. The information is not sufficient for us to answer. Other details of your relationship would have to be known. Until you have definitely established his position, you should comply with labor and social security laws as if he were an employee. Trying to combine price guarantee with employee-relationship is a difficult job. Better be very sure of your ground before establishing the practice in your business.

Q. I am a general contractor. I entered into a contract with an owner upon his statement that he had a certain amount of money to be paid me as the job progressed. He said he had the money "in the bank." As the job went along he couldn't pay me and I found that he didn't have the money. He expected to borrow it but he couldn't seem to get it. Am I justified in breaking the contract?

A. This difficulty should always be referred to an attorney.

Q. One of my sub-contractors submitted a written bid and as soon as I got the job I wrote him telling him his bid was accepted

and the contract was his. He wrote back and said he didn't care to do the job—that he had taken on additional work. I let him go because it wasn't worth fighting about, but I wonder whether or not I should have forced him to go ahead on the basis that he had a contract with me. The sub-contractor said that he didn't have to take the job since he had only signed a bid.

A. If the bid which you received from him was accepted within a "reasonable" length of time and there was no fraud or any element of that sort present, certainly you created a contract when you accepted that sub-contractor's bid. In the absence of any good reason for his failure to proceed, you had a civil action against him or an action against his contractor's license under Section No. 7107 of the Business and Professions Code, for abandonment of contract.

Q. A lot of chiseling builders apparently don't want to sign up written contracts with us sub-contractors so that they can later argue about the payment. How can I protect myself?

A. If they refuse a reasonable request for a contract, then the danger signal is out. It's up to you to look out.

Q. You recently suspended my license because a contractor charged that I had a contract and didn't carry it out. As a matter of fact that contract was only an estimate and I didn't finish it out because I found the general contractor wasn't going to pay me the fair value of the job, which ran a little over my estimate. How do you explain that?

A. That is easily explained. The Registrar, upon all facts presented, reached a decision that you did have a contract as a matter of law—not an estimate.

Q. What is the difference between an estimate and a bid or a contract?

A. An estimate is given merely for the purpose of giving the general idea of cost, and the party giving the estimate is not bound within the limits of that estimate if they are later given the work. Naturally, if they are given the work based upon an estimate only they must use their own skill and good judgment to keep the cost down as low as possible. A bid is an offer which, if accepted within a reasonable length of time, likens into or becomes a contract. Therefore, a bid can be a binding contract if it is accepted and the contract is what constitutes the actual agreement and is based upon the bid that was first given. Of

course, there may be no bid; the parties may immediately get together, decide on a price and proceed into the contract or the contractor may tell the party who is going to do the work how much he will pay for the work, and the party may agree without submitting a bid himself. Contractors submitting "estimates" should protect themselves by submitting them in writing and clearly stating that they are estimates, not bids. There is a presumption that a figure is a bid, not an estimate, in the absence of evidence that the party only desired to estimate. Many difficulties arise because the contractor gives a figure believing it to be an estimate and the other party takes it as the figure upon which the contractor is willing to do the work and based upon that figure awards the job. Sometimes it appears even more necessary or advisable to have all estimates in writing than to have contracts themselves. Many contractors have been forced into a compromise because the figure they gave as an estimate was taken as a bid and someone later and often unfairly attempted to take advantage of the difference of opinion.

Q. How long is a contractor required to maintain a building by keeping the windows and doors in proper order and by repairing minor leaks?

A. There is no set time unless the contract definitely covers this point. It is good business and so recognized by most contractors to see that all working portions of a job are put in good order at least once. Where failure of a building to properly function in any respect continues after completion and this occurs because of a violation of the plans and specifications, then, of course, the owner has a right to insist that the original contract terms be fulfilled. This, however, is not upkeep because the difficulties do not arise out of ordinary wear and tear, the responsibility of which is certainly not to be placed upon the contractor.

Why Licenses Are Suspended or Revoked

(Continued from page 11)

the references to the ordinances have automatically made them a portion of the specifications.

It frequently occurs that plans and specifications are prepared by an owner or by someone acting for the owner and then given to a contractor who has not been responsible for their preparation. If the plans and specifications conflict with local ordinances or are not such that they can be actually fol-

lowed, then the contractor is certainly absolved from following the plans and specifications. It would be unthinkable to require him to be a law-breaker. He should not make any changes, however, to get around the obstacle without first having worked the problem out with the owner and without having secured the owner's definite consent to the changes that are to be made.

Contractors frequently ask whether or not they are required to maintain and to pay for the upkeep on buildings after the buildings have been constructed. Contractors frequently and properly object to requests by owners that they go back and repaint certain portions of a building or refinish certain of the floors, or repair minor leaks that have occurred long after the building was constructed. The question is—can their complaints be construed as coming within the purview of the section being studied.

In general, if an owner moves into a building and makes no complaint within a reasonable length of time as to errors in the building which are readily observable to the owner, the contractor has the right to assume that the situation arises from wear and tear and that he is not responsible. This is based on an assumption that the job was originally completed in a proper manner throughout.

If, however, conditions which are not readily apparent to an owner later do become apparent and it seems that the contractor has departed from the plans and specifications and thereby injured the owner, the owner certainly has the right of complaint providing he brings it within a reasonable length of time after the condition comes to his notice.

Complaints against a contractor's license may be brought within a period of two years after the date of the act causing the injury. But where the condition is not known to the owner, and can not readily be ascertained by him, or where by fraud by the contractor it has been kept from the knowledge of the owner, the two year period begins to run when the owner learns of the difficulty.

The time for filing actions in the civil court is much longer. Action for civil damages may be combined with a petition to the court to suspend the contractor's license, as well as to give judgment against him.

The February, 1941 "*California Licensed Contractor*" will have an article explaining Section 7110 of the Business and Professions Code:

"Wilful or deliberate disregard and violation of the building laws of the State, or of any political subdivision thereof, or of the safety laws or labor laws or compensation insurance laws of the State constitutes a cause for disciplinary action."

Legislation Affecting Contractors Is Studied

Proposals for far-reaching changes in the State laws and in the Contractors' Act have been made by numerous construction organizations. In some instances the changes desired or the new laws suggested have met with universal approval and in other cases groups or sections have questioned the advisability of the proposals.

In the past the construction industry, through its various groups and spokesmen, has frequently gone to the Legislature for assistance, but the efforts have not been correlated and out of the confusion that has arisen the industry has gained less than it would have otherwise received.

In order that the entire industry may be aware of the various proposals to be presented to the Legislature, and also in order that the industry may rightly support those proposals which are found to have general approval, a conference of various contractors' organizations in the State was held at Fresno on September 21, 1940, by the call of your Registrar, acting under instructions from the Board. The aim of your Department was to

establish an organization in which representation would be offered all contractors' groups.

As the result of the meeting, an organization known as the California Contractors Legislative Council was established. The chairman and secretary chosen were respectively:

W. C. Tait and George Sharp

Prior to the issuance of the February, 1941 *California Licensed Contractor* a symposium of these bills will be prepared and printed for the benefit of our readers. The article will thus be in your hands before the final session of the Legislature which commences about March 1, 1941. No action upon these bills will be taken by the Legislature before the March session. Every individual contractor in the State will be able to know what proposals are presented to the Legislature directly affecting his business through the introduction of new laws or the amendment of existing laws relating to the contracting business.

Mr. Contractor: Are You In Business For Yourself?

(Continued from page 2)

journeyman. Not enough jobs to take full time for supervision; too many to continuously work upon himself. These men are in an economic condition where they will seldom if ever better their position, unless they are able to move up into the larger field where they are employing more men. Few examples of this appear. This involves an extension of their credit, among other things, and if they have necessarily started in on such a small scale it must be assumed that they had insufficient capital and probably will not be able to increase that capital.

"A painting contractor who expects to make a success of the business should not enter the game until he already has sufficient capital so he can shortly go into the business on a sufficiently large scale to be operating a business, not an employment agency for himself and a few others."

A general contractor who builds on an average of fifteen houses a year with the total value averaging about \$65,000 was asked to cooperate in interviewing the various subcontractors he was currently using. These subcontractors, in the main, were men who were

doing small residential work, running crews of from two to twelve men and about half of them worked on the job with their men.

At the outset of the interview it was suggested that what the questions were designed to elicit were facts and therefore the contractor should avoid the first impulse of almost every business man to say that the grass across the street is greener. In other words, we warned these men that we wanted them to honestly consider the situation before answering and not to give the snap judgment that is so often given when one is asked whether or not "business is any good."

The answers showed that a majority of these subcontractors *know* by their own records that for the past several years the better journeymen employed by themselves have made more per year than have the contractors. A few reporting differently, didn't charge as overhead certain costs that should have been figured.

Many conclusions may be reached as to how a situation of this sort can be corrected, if at all. Certainly, it is not the American Way to say that a man should not be able to gradually emerge from the ranks of labor and to move into the contracting field. On the other hand, it would seem that there is too great a tendency on the part of a journeyman or one insufficiently prepared to move into the con-

tracting business before the time is ripe. By so doing he dooms himself to failure whereas if he had waited until he was in proper shape his chances of success would have been very greatly increased.

Likewise, the conclusion that the working subcontractor, merely because he is small and is not making much money, should be dropped from the contracting field, is not a satisfactory conclusion to reach. Nor is there any likelihood whatsoever that any steps, official or otherwise, will ever be taken to force such exodus from the contracting field of such operators. However, it would seem that the industry as a whole should continually search out the facts as to what fields or divisions or sections of the industry are not profitable, and to publicize these facts for the benefit of the men themselves who are caught in a situation which will not in the long run react to their own advancement. It is quite probable that too many men are continually holding the hope that their contracting business will grow to satisfactory volume, and that their profits therefrom will give them a solid place in the economic scheme of things.

If facts show that their hopes are doomed to be blasted, let these facts speak for their guidance. By continuing their losses until they are forced into bankruptcy, or back into the fields of labor at an age when they are too late to be employed, their chances of making the most of their capabilities throughout their life have been injured. Their chances of giving their children a good start in the world have been lessened.

It even seems that we have a social problem as well as an economic problem in considering whether or not men should be encouraged or discouraged from entering or continuing in the contracting business too soon or too long. Failures cost everyone in the community money. By failure we do not necessarily mean a bankruptcy. The man who has through his life been unable to secure for himself and dependents a competency of some sort, becomes a public charge. Social Security makes the way easier for the wage earner. But the contractor who retires from the contracting business because of advanced age and who has amassed nothing whatsoever in the way of wealth, is necessarily a full charge upon the community and the cost has not been underwritten as in the case of his employees. Saddest of all, his income has been less during his lifetime than had he continued steady employment as a journeyman; a life of worry and struggle, no peace at the end, these have been his lot.

Whether or not contractors who are unable to rise above competitors who are also not

economically successful have an injurious effect upon the price structure and the wage scale, is a subject sufficiently broad for separate discussion. Certainly labor has no interest in encouraging the continuation of a branch of the industry which is not sufficiently sound economically so that it can easily pay a fair scale of wages. Many contractors are today paying wages that are far too low, not because they desire so to do, but because they are unable to compete upon a basis which permits them to employ better help at a better price. This condition does not help labor, it does not help the industry, it does not help the public. It is not the function of the Contractors' License Board to sit in judgment upon economic groups, or upon individuals who are in an economic struggle of more than usual intensity. Nevertheless, this matter is so generally understood that it was felt by the Board and by the Registrar that a frank discussion of the situation was in order so that it will be before the industry as a whole. If it acts to show the light to men who may spur themselves on to great efforts and thus raise themselves by their own boot-straps—fine. If it discourages anyone, let that party first carefully assay his position. If his discouragement is supported by facts, let him face them and move now before it is too late to take the best steps open to assure himself and his dependents a better standard of living.

Case No. 9999

Before the

CONTRACTORS' STATE LICENSE
BOARD

JOHN DOE,

Complainant,

vs.

RICHARD ROE,

Defendant.

No. 9999

Comes now the complainant-- above named and as cause of complaint against the above named defendant-- alleges as follows:

I

That at all times herein mentioned the defendant-- was/were acting as and in the capacity of contractor-- under the provisions of Chapter 9, Division III of the Business and Professions Code, and was/were duly licensed as a contractor-- pursuant to Article 5 of said chapter and code. That while acting as said contractor-- and while so licensed, the de-

defendant... did violate the provisions of sections 7108, 7116, 7120 of said code in the following particulars, to wit:

II

That on or about the 31st day of February in the County of Kern this defendant acting as an electrical subcontractor performed the electrical contract for the complainant upon the premises at 9876 Blossom Way in the city of Oilville.

Upon completion of the work and at the request of the defendant complainant paid defendant in full for the performance of his contract.

The amount of defendant's contract was \$176.

Thereafter a lien was filed by Oilville Material Company for \$218.33, alleging that they had furnished materials for the sum of \$218.33 upon the job in question to this defendant, and that they had not been paid.

A Bill of Particulars by said Oilville Material Company shows that materials had been charged to the job in question not called for in any respect by the plans and specifications and it is a fact and known to this complainant that no such materials or fixtures were used in the job in question.

WHEREFORE, The complainant prays that the Registrar of Contractors make such investigations, hold such hearings and take such action as he may deem necessary upon the foregoing complaint.

JOHN DOE,

Signature of Complainant.

The facts of the case were as follows as found by the Registrar:

That the defendant was a subcontractor who purchased materials in "package" quantity. Upon the job in question he purchased materials which he picked up from the material house and took to the job. He stated to the material house that these materials were to be used upon the particular job and therefore the purchase was by job account. He did take the materials to the job and used a large proportion of the materials on the particular project but not all of them. When his packages were broken there were some balances left which did not work out evenly with the requirements of the particular work and the defendant placed these surpluses in stock. The defendant also purchased materials with this order which were not called for at all in the job in question but were nevertheless sold to him upon the basis of the credit value of this particular job. The defendant received his pay in full upon the job and failed to use any portion of it for retirement of the mate-

rial dealer's bill, although his entire payment was not absorbed in labor or any other direct job charges.

The Registrar found that the defendant diverted funds. The monies he received in payment of his work were sufficient to have retired the material dealer's bill either in full or to a large extent and his failure to so use the funds made him guilty of a violation of section 7108.

The contractor did a wilful and injurious act because he purchased materials upon job account which were not to be used for this particular job. In fact the material man's lien was in excess of the contractor's subcontract. The filing of the lien and the withholding from the material dealer of his money for several months caused a substantial injury. The contractor was guilty because of this wilful and injurious act of a violation of section 7116.

The same facts which required that the contractor be guilty as charged of diversion of funds also constituted a violation of section 7120. That is to say, the contractor wilfully and deliberately failed to pay a construction obligation when having the capacity to pay. His capacity rose from the fact that the money he received for his subcontract came actually into his possession and could have been used to pay the material dealer but was not so used.

The contractor's license was suspended for a fixed period of time.

Prior to the date of hearing the contractor had paid the material man and the lien had been released and therefore at the time of the Registrar's decision there were no remaining losses. However, settlement of the job did not cure the law violation that had already occurred. The complainant, in fact, had requested dismissal of the complaint, which request was refused by the Registrar. The Registrar's office does not like to have complaints filed for collection purposes. If a violation of the License Law has occurred the Registrar feels that the complainant should proceed to a hearing in order that the situation will be thoroughly aired before the Registrar.

Inspector of Board Called to Active Duty

Albert G. Kelly, Inspector for the Board in the San Jose area, was called to active duty in the U. S. Army.

Kelly, a lieutenant in the Reserve, was granted a leave of absence by the Board, to become the Assistant Chief Construction officer at Fort Clayton in Monterey County.

Kelly's experience in the construction field combined with the experience he received as an Inspector for the Contractors' State License Board qualified him for the Government position.

