

COPY

DEPARTMENT OF COMMERCE

BUREAU OF PUBLIC ROADS

WASHINGTON 25

March 23, 1950

To: Mr. S. L. Taylor, Division Engineer, Washington 25, D. C.
From: T. H. MacDonald, Commissioner
Subject: Convict Labor

We have received a copy of your letter of February 28, 1950, addressed to Mr. C. S. Mullen, Chief Engineer of the Department of Highways of Virginia, relating to the use of convict labor on Federal-aid highway projects.

The information furnished to Mr. Mullen in your letter is in keeping with the policy announced by Congress in the various Federal-aid highway appropriating acts and in the regulations for carrying out the provisions of the Federal-aid highway legislation. Recently a State which had been advised that Federal funds could not be used to help pay the cost of signs and markers produced by prison labor for use on a Federal-aid project appealed such decision to the Secretary of Commerce. As a result of this appeal, the Secretary reviewed that portion of section 1.13 of the regulations which prohibits the employment of convict labor and the use of materials manufactured or produced by convict labor on any Federal-aid project and decided that no change should be made in this regulation.

While no rule can be laid down which will answer all of the various questions that may be raised on this subject, it may be stated generally that the prohibition against the use of convict labor and prison made goods applies to all stages of a Federal-aid project from the time of its program approval until its completion in accordance with the program approval whether or not part of the work is nonparticipating or the materials to be used are for a nonparticipating section within the termini of the project. The following may be helpful in giving consideration to questions that may arise on this subject:

1. No part of any project which has been programed as a Federal-aid project would be eligible for Federal aid if convict labor is to be used on any stage of the construction work covered by the program approval.

2. If a State performs the initial work of building the drainage structures or of grading the roadway with convict labor and later has a program approved for the completion of the surfacing or pavement

with Federal funds, there would be no objection thereto on the ground that the earlier construction stages prior to program approval had already been completed with convict labor.

3. Landscaping and other roadside improvements, not included in a program approval, undertaken with convict labor at the sole cost of the State after the completion of a Federal-aid project would not be considered as banned by the convict labor proviso.

4. Federal aid may not participate in the cost of signs or other materials manufactured or produced by convict labor; and no such signs or materials may be installed or used on a Federal-aid project between the date of the program approval and the completion and acceptance thereof.

5. No project may be considered eligible for Federal aid where the State uses convict labor within the termini of the project concurrently with the Federal-aid improvement even though the convicts may be worked on nonparticipating portions thereof.

It is thought that the foregoing will include the principal questions likely to arise concerning the use of convict labor and convict made materials. Specific problems can be answered only when and as all of the facts are presented.

CC: Mr. Tayler
Mr. C. E. Swain
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April 28, 1948

CONVICT LABOR

The Agricultural Appropriation Act for the fiscal year 1933 provided in the paragraph making appropriations for Federal-aid highways that:

* * * * none of the money herein appropriated shall be paid to any State on account of any project on which convict labor shall be directly employed."

Beginning with the appropriation act for the fiscal year 1934, and for each fiscal year thereafter, the word "directly" was omitted. Otherwise, the language remained the same as in the 1933 fiscal year appropriation act.

The debates on this provision indicate that it was originally adopted because at the time there were millions of free men out of employment and that it was being enacted in the nature of an emergency measure. The amendment was offered on the floor of the House in January 1932 by Mr. La Guardia of New York. He stated that the amendment was offered for the purpose of providing employment for free labor; that the appropriation at that time was largely a relief measure. He further stated that the very idea of providing funds for the relief of unemployment and then using convict labor on such road construction would be humorous if it were not so tragic. He pointed out that his amendment would not affect road appropriations in 44 States; that it involved only four States on existing contracts, namely, Alabama, Florida, New Jersey, and Virginia. He added that the amendment would in no way conflict with any State law or custom within the State; it simply would limit payments on any given project aided with Federal funds where convict labor is employed. In other words, if a State desired to employ convict labor on its own roads, paid for entirely with State funds, it could do so under its own laws; that could not be stopped. His limitation would apply only "where Federal funds are involved."

Some of the debate ran as follows:

Mr. Hull. * * * * If the roads are being built and they have so many convicts working on a part of them and they expend this money for another part of the road construction, I do not see where it does any harm."

Mr. La Guardia. "Every convict working in this way takes a place of a free laborer or of an unemployed man who obeys the law and wants to live and support a family honestly. Every convict used displaces an unemployed worker."

During the course of debate on the floor Mr. Buchanan made the point that the appropriation was the regular annual highway appropriation for the construction of highways throughout the States. "Not one cent of the emergency appropriation was made for the purpose of aiding unemployment."

Mr. Snell. "We are not contending that you should not use your prison classes on the roads, but we are opposed to the use of Federal money in payment of that class of labor."

Mr. Cox of Georgia argued that if a State was not permitted to use convict labor as a means of matching Federal-aid road funds, then these activities would cease in many of the southern States because the States were unable to raise the money to make the contribution necessary for the payment of private labor; that in many States convicts are used doing preliminary work looking toward final completion of the roads. These include grade on which unskilled labor may be used.

Mr. Ranspeck argued against the amendment and pointed out that the Federal Government itself uses Federal prisoners to build highways. It keeps them out in the open.

Mr. Simmons. "If I understand that amendment, it does not prevent the use of these people out in the open on the road. It does prevent putting them on certain roads and matching American dollars with convict labor."

Mr. Ranspeck. "I understand that we have some counties in Virginia that would be unable to do their work unless they can do the grading and certain other work through convict labor. They have not the funds to pay the taxes and match the Government funds to build highways."

Mr. Crisp. "To get the record straight, I just phoned Mr. MacDonald. He says that in the four States referred to he thought contracts were now in existence and that those States would be prohibited from obtaining funds under this amendment. He said other States in the past had used this fund, among them 'my own State, Georgia'". (Page 2842. Cong. Rec. January 26, 1932)

Mr. Dowell argued in favor of the amendment. He stated that because of a real demand for employment throughout the country the amount for Federal-aid highways was increased from \$75,000,000 to

\$125,000,000. Just today the Chief of the Bureau of Roads was before the Committee on Roads urging the continuation of this for the employment of labor throughout the country. The amendment was agreed to largely on the ground that at that time every effort was being made to find employment for people throughout the country; that convict labor should not be substituted for free labor. (Page 2842, Cong. Rec., 12632)

The amendment was agreed to in the Senate with the exception added that it should not apply to convict labor performed by convicts on parole or probation. (Page 5257, Cong. Rec., March 2, 1932)

The Senate Committee on Roads struck out the House amendment relating to convict labor. The question of restoring the House language with an amendment thereto relating to parolees was then debated on the floor of the Senate.

Senator Britton argued for the restoration of the House amendment largely on the ground that at that time when so many millions were unemployed public funds of the United States should not be used for road construction in combination with convict labor. He stated that "this proviso is confined to the use of money appropriated in the act." "It is confined to particular projects." "A State may have a half dozen projects and if it wants to use convict labor on three of them it cannot use any of this money upon those three; on the other hand, where convict labor is not employed, the State may receive its quota and use it. If a State wants to use convict labor on Project A the State must forego the use of convict labor upon that particular project. It may use convict labor elsewhere and draw its full quota of Federal funds."

During the debate Senator Dickinson of Iowa asked Senator Britton whether he favored this amendment as a continuing policy or merely as an emergency policy.

Mr. Britton. "It is an emergency policy, and for the present I am confining myself to that." (Page 5259, Cong. Rec., March 2, 1932)

Senator Dickinson stated that the chances of removing legislation of this kind from an appropriation bill once enacted are remote. Senator Britton replied to the effect that Congress would have the ability, the courage, and foresight to change the legislation when changed conditions justify it.

Mr. Trammel. The amendment restricts this limitation to a given project?

Mr. Britton. It does.

Mr. Trammel. If we drive convict labor from that particular project to another project in the State we are bringing about a

transfer of labor, how do we give employment to any greater number of people?

Mr. Britton. That is an injustice which is done by the State and not by the Federal Government. It is beyond the power of Congress to deal with. (Page 5299, Cong. Rec., March 2, 1932)

Debate was resumed March 3, 1932 (Rec. page 5345). In the Senate the debate centered around the question of depriving the State of the right to use Federal-aid highway money and to furnish employment to free labor just as it did in the House.

Senator Trammell of Florida stated he would not object to the amendment as a temporary measure but he was opposed to it on a permanent basis as an unwarranted interference with the States' rights. Although so stating, at the same time he indicated that it was his opinion the amendment would not accomplish anything for free labor.

The amendment was carried in the Senate by a vote of 45 to 24.

The House agreed to the Senate amendment permitting convicts on parole or probation to work on Federal-aid highways. (Page 12964, Cong. Rec., June 10, 1932)

WJOL