

of said contract and bond by a successful bidder his check shall be returned to him. The amount of said check shall be five hundred dollars. The checks of the unsuccessful bidders shall be returned to them after opening the bids and awarding the contract to the successful bidder; provided, however, that said commission, with the consent of a majority of all its members, may itself do any part or parts of any such work under such conditions in every respect as it may prescribe by day labor, whenever the chief engineer, in writing, shall recommend that course.¹

Although this section as enacted by act of 1908, ch. 141, was repealed and re-enacted by act of 1910, ch. 721, after former had been repealed and re-enacted by act of 1910, ch. 218, act of 1910, ch. 721, is valid. The surety on a bond given under this section is liable in an action by a creditor of contractor for labor and materials, irrespective of whether express language of bond or act gives it to him. The creditor may sue in name of state. How the bonds of surety companies are to be construed. *Am. Fidelity Co. v. State*, 128 Md. 52.

A surety bond guaranteeing that principal will promptly pay his debts for labor and material in the construction of a certain work, is not liable to holder of promissory notes which are alleged in declaration to have been given for money borrowed by principal and used in paying for such labor and materials. *So. Md. Bank v. Natl. Surety Co.*, 126 Md. 291. And see *Am. Fidelity Co. v. State*, 128 Md. 54.

Where a plaintiff does not sue as a taxpayer, nor does it appear from bill that he is a taxpayer, he is not entitled to restrain execution of a contract claimed to be illegal under this section, or to enjoin the unlawful expenditure of state funds. See notes to sec. 57. *Fisher & Carozza Co. v. Mackall*, 138 Md. 590.

An. Code, sec. 37. 1908, ch. 141, sec. 32E. 1912, ch. 371, sec. 32E. 1924, ch. 312.

31. Said commission shall keep all State highways reasonably clear of brush and maintain same in good condition; shall cause suitable shade trees to be planted thereon, if practicable, and may establish and maintain watering troughs upon such highways. Said commission may give suitable names to the State highways and change the name of any highway which becomes a part of the State highway. The said Commission is hereby authorized and empowered; in its own discretion, to adequately mark for direction and distance all improved highways in the State.

This section cannot be construed as only applicable to highways after improvements thereon by commission have been completed. See notes to sec. 28. *United Rys. & Elec. Co. v. State Roads Com.*, 123 Md. 584.

See notes to sec. 32.

See sec. 62.

An. Code, sec. 37A. 1912, ch. 371, sec. 32E-A. 1922, ch. 253.

32. No opening shall be made in any such highway, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or renewed except in accordance with a permit from the commission, which shall exercise complete control over such highways, except as herein otherwise provided. No State highway shall be dug up for laying or placing pipes, sewers, poles or wires or railways, or for other purposes, and no trees shall be planted or removed or obstructions placed thereon without the written permit of the State Roads Commission, or its duly authorized agent, and then only in accordance with

¹ The act of 1910, ch. 218 (p. 300), also repealed and re-enacted sec. 32D of act of 1908, ch. 141, but as act of 1910, ch. 721 (p. 298), was approved later, it is selected for codification.