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AMOUNT OF MONEY WITHHELD AT COMPLETION OF CONTRACT SHOULD BE 4% TO BE RETAINED FOR 30 DAYS ; IF CONTRACT HAS BEEN PERFORMED, NO AMOUNT SHOULD BE RETAINED—§§735.071, 735.072, R.C.

## SYLLABUS :

Under the provisions of Sections 735.071 and 735.072, Revised Code, the amount of money withheld at the completion of a contract should be four per cent, which amount should be retained for thirty days, after which time, if the contract has been faithfully performed, no amount should be retained.

Columbus, Ohio, August 22, 1961

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“I request your opinion respecting the following :

‘Revised Code 735.071 provides in part as follows :  
Partial payment to the contractor for labor performed \* \* \* shall be made at the rate of ninety-two per cent of the estimates prepared by the contractor and approved by the architect or engineer. All labor performed after the job is fifty per cent completed shall be paid for at the rate of one hundred per cent of the estimates \* \* \*

‘Section 735.072 of Revised Code in part provides \* \* \* from the date of completion or either acceptance or occupancy

by the city, village or proper agency thereof, four per cent shall be retained as additional security for thirty days \* \* \*

'Section 735.073 of the Revised Code in substance provides that ninety-two per cent of the estimated value of all material shall be paid upon delivery of the same and the balance shall be paid when the material is incorporated into and becomes a part of the building \* \* \*

"My specific request for an opinion concerns the question of whether or not the eight per cent withheld as per R. C. 735.071 for the first fifty per cent of the work is paid after the work is more than fifty per cent completed and further the four per cent to be retained as additional security provided in R. C. 735.072, is that in addition to the eight per cent or a part of the eight per cent?

"To state my question more clearly :

1. Will the total amount of monies withheld at the completion of the contract be equal to twelve per cent?
2. Does the language 'additional security' mean four per cent plus the eight per cent or four per cent in addition to the performance bond?
3. When is the eight per cent initially withheld paid to the contractor?"

Under the provisions of Section 735.071, Revised Code, partial payments to a contractor for labor performed are made at the rate of ninety-two per cent of the estimates until the job is fifty per cent completed, and at the rate of one hundred percent of the estimates thereafter until completion. Ninety-two per cent of the first fifty per cent and one hundred per cent of the last fifty per cent equals ninety-six per cent of the total. It follows, therefore, that when the job is one hundred per cent completed, only four per cent of the total estimates will remain unpaid.

Under the provisions of Section 735.072, Revised Code, four per cent shall be retained as additional security for thirty days from the date of completion of the job.

It was obviously the intention of the legislature that the four per cent of the total estimates remaining unpaid pursuant to Section 735.071, *supra*, should be retained pursuant to Section 735.072, *supra*, for thirty days following the date of completion of the job, as security for the faithful performance of the contract, in addition to the performance bond.

It is my opinion, therefore, and you are accordingly advised that under the provisions of Sections 735.071 and 735.072, Revised Code, the amount of money withheld at the completion of a contract should be four per cent, which amount should be retained for thirty days, after which time, if the contract has been faithfully performed, no amount should be retained.

Respectfully,

MARK MCELROY

Attorney General