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July 30, 1951
Op. No. 51-211

E. W. Tillinghast, Superintendent
Arizona State School for the Deaf and the Blind
Tucson, Arizona

Dear Mr. Tillinghast:

This is in reply to your letter of July 19, 1951 wherein you ask regarding a clause to be placed in your building contract. We believe that the proper insertion should read as follows:

"On or about the 10th day of each month 90% of the value of the work actually performed as estimated by the architect or superintendent, up to and including the last day of the preceding month, less the aggregate of previous payments, and upon substantial completion of the entire work a sum sufficient to increase the total payments to 90% of the contract price."

We do not believe the clause "and of material suitably stored at the site thereof up until the last day of the month" is a proper clause at all and is not authorized by law, and that you may not pay 90% of the materials stored at the site.

In answer to your second question, it seems to us that the statute is very plain on this. You will find the last amendment, Chapter 22, First Special Session of the Nineteenth Legislature, which reads as follows:

" * * * TEN per cent of all estimates shall be retained by the agent as guarantee of the complete performance of the contract, to be paid to the contractor within sixty-five days after completion, or filing of notice of completion, of the contract, provided the contractor has duly furnished the agent satisfactory receipts for all labor and material

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bills and waivers of liens from any and all
persons holding claims against the work.
* * *

We do not believe you, as agent, have a right to deviate from
the plain terms of the statute.

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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