

4358.

PURCHASES AND PRINTING DEPARTMENT—CONTRACT FOR PRINTING OF FOURTH CLASS MATTER FOR STATE.

SYLLABUS:

1. *A printer who has a contract for the printing of fourth-class matter for the state of Ohio, may not be paid for press work on the basis of single copies of the matter of fourth-class to be printed, although the sheets furnished him by the proper offices of the state are of a size sufficient for him to print a number of copies on a single sheet at one impression.*

2. *Charges may not be made by printers of the various classes of state printing for extra work such as alterations, make-up, lock-up, binding, type rental, etc.*

COLUMBUS, OHIO, June 24, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“An invoice from the Department of Finance, Division of Purchases and Printing, has been presented to this department for payment of printing return cards on 150,000 window envelopes, in the sum of \$312.54. In checking this price with the contract form governing state printing, we find that Section 754 of the General Code was amended in 1925, in which *fifth* class matter was denominated as *fourth* class matter, but 774 was still left as *fifth* class matter.

Paragraph 6 in the Contract is not an exact copy of Sec. 774 of the Code. The contract form inserts the words ‘as the case may be’ after ‘side or page’ and changes the following word ‘of’ to ‘or’. Under the interpretation of a contractor who has obtained the contract for the printing of the fourth class matter, although he may be furnished sheets large enough to print more than one copy on each, he charges, or may charge on the basis of the quire rate for each twenty-four copies.

It is also the practice for printers under the various classes of printing to make charge for extra work such as alterations, makeup, lockup, binding, type rental, etc. However, only composition and press-work are specified in the contract and the statutes make no provisions for such extra charges.

Question 1. In view of the facts and apparent inconsistencies of paragraph 6 of the contract and Section 774 and 784 of the Code (referring to fifth and fourth class matter) may the printer be paid on the basis of single copies of the matter of fourth class to be printed, although the sheets furnished him by the proper offices of the State are of a size sufficient for him to print a number of copies on a single sheet at one impression?

Question 2. May charges be made by printers of the various classes of printing for extra work, such as alterations, makeup, lock-up, binding, type rental, etc., when not mentioned in the contract as provided by the Superintendent of Purchases and Printing?”

Chapter 4 of Division II of Title 3 of Part One of the Ohio General Code, embracing sections 745 to 786, is entitled “Supervisor of Public Printing”, and regulates in major part contracts for state printing.

In order to clearly answer the specific questions you present, it is believed that it is essential to trace briefly the past history of the present statutes regulating state printing.

On March 24, 1860, the legislature passed an act in twenty-six sections (57 O. L. 88) entitled "To provide for the execution and supervision of the state printing and binding."

Section 1 of the afore-mentioned act provided for commissioners of public printing. Section 2 provided for division of the printing of the state into five classes, reading as follows:

"The printing for the state shall be divided into five classes, to be let in separate contracts, as follows: The printing of all bills for the two houses of the general assembly, together with such resolutions and other matters as may be ordered by the two houses, or either of them, to be printed in bill form, shall constitute the first class, and shall be let in one contract; the printing of the journals of the senate and house of representatives, and of such reports, communications, and other documents as enter into and make a part of the journals, shall constitute the second class, and shall be let in one contract; the printing of all reports and all communications and other documents ordered by the general assembly, or either branch thereof, or by the executive departments, to be printed in pamphlet form, together with the volumes of public documents, shall constitute the third class, and shall be let in one contract; the printing of the general and local laws, and joint resolutions, shall constitute the fourth class, and shall be let in one contract; the *printing of all blanks, circulars, and other work necessary for the use of the executive departments, other than such as shall be printed in pamphlet form, shall constitute the fifth class, and shall be let in one contract.*" (Italics the writer's.)

Section 3 of the Act provided that the Commissioners of Printing receive biennially, bids for the five classes of state printing, and stated in part:

" * * * Said proposals shall distinctly and specifically state the price per thousand ems for the composition of all matter embraced in the five classes of printing, or such of them as shall be covered by the bid; the price per token for all press work embraced in the first, second, third and fourth classes, and the price per quire for the press work contained in the fifth class, at which the bidder will undertake to do the work embraced in the class or classes of the printing covered by his proposals. * * *"

Sections 5 to 9, inclusive, of the aforementioned act governed specifications for the first, second, third, fourth and fifth classes of work, respectively. Section 9 of the Act, regulating specifications for the fifth class, read:

"The printing for the executive departments, embraced in the fifth class, shall be executed in a style consistent with good workmanship, and with due reference to economy. In estimating the composition, all work in script type, or of which script is the chief kind used, shall be estimated as pica, and measured by the surface actually covered—not by the size of the sheet used. All open work, such as letterheads, blank deeds and the like, shall be estimated in the same manner; provided, no job shall be counted as less than one thousand

and ems. All work in other than script type, shall be estimated according to the type actually used; provided, that when different kinds are used in a single job, it may be measured and estimated proportionately for the different kinds used. *In estimating press work, in the fifth class, a quire shall be considered twenty-four impressions of a side, or a page, as the case may be, of twenty-four full sheets of such paper as the proper officer may furnish, with such matter as the printer shall be directed to put upon it; provided, that no job of press work shall be estimated at less than one quire.*" (Italics the writer's)

Upon general revision of the statutes of Ohio in 1880, section 2 of the act of 1860 was carried into the Revised Statutes as Section 319 and Section 9 as Section 326. The language of such sections of the Revised Statutes was practically identical with the wording of the sections of the act of 1860.

In 1894 the legislature amended section 319 of the Revised Statutes to provide for seven classes of state printing instead of five as formerly. The matter included in the former five classes was not disturbed, but the two additional classes were added. The bulletins of the Ohio Agricultural Experiment Station constituted the sixth class and the report of the Secretary of State, Auditor of State, Commissioner of Common Schools, Commissioner of Railroads, Commissioner of Labor Statistics, etc., constituted the seventh class.

At the time of this amendment of section 319, Revised Statutes, Section 326, Revised Statutes, regulating, among other things, the estimation of press work of the fifth class was not disturbed.

In 1910, when the present Ohio General Code was adopted, Revised Statute 319 as amended in 1891 became Section 754, General Code, all of Section 326, Revised Statutes, with the exception of the last sentence became Section 773, General Code, and the last sentence of Section 9 of the Act of 1860 (the last sentence of Section 326, Revised Statutes) became Section 774, General Code. These sections as enacted in 1910, read:

Sec. 754. "The printing for the state shall be divided into seven classes and shall be let in separate contracts as follows:

First class: Bills for the two houses of the General Assembly, resolutions and other matters ordered by such houses or either of them to be printed in bill form.

Second class: The journals of the senate and house of representatives, and reports, communications and other documents which form a part of the journals.

Third class: Reports, communications and other documents ordered by the general assembly or either house thereof or by the executive departments, to be printed in pamphlet form, not including the bulletins of the agricultural experiment station.

Fourth class: General and local laws and joint resolutions.

Fifth class: Blanks, circulars and other work for the use of the executive departments, not including those to be printed in pamphlet form.

Sixth class: The bulletins of the agricultural experiment station.

Seventh class: The report of the secretary of state, auditor of state, commissioner of common schools, superintendent of insurance, railroad commission, commissioner of labor statistics, state board of agriculture, and other re-

ports of executive officers required by law to be bound in either cloth or half law binding, not including the laws, joint resolutions and journals of the house and senate.

The printing for each of the classes except the seventh class shall be let in one contract; the printing for the seventh class may be let in one or more contracts as the commissioners of public printing in their discretion may require."

Sec. 773. "The printing for the executive documents embraced in the fifth class shall be executed in style consistent with good workmanship and with due reference to economy. For all work in script type or work in which script type is chiefly used, the composition shall be estimated as pica, and measured by the surface covered and not by the size of the sheet, letter heads, blank deeds, and other open work shall be estimated in the same manner, but no job shall be counted less than one thousand ems. Work in other than script type shall be estimated according to the type used, and, when different kinds of type are used in the same job, the work may be measured and estimated according to the proportion of different kinds used."

Sec. 774. "In estimating press work in the fifth class, a quire shall be considered twenty-four impressions of a side or page of twenty-four sheets of paper furnished by the proper officers, with such matter as the printer is directed to print thereon. No job of press work shall be estimated at less than one quire."

In 1915 the legislature amended Section 754, General Code, as follows:

"The printing for the state shall be divided into seven classes and each class shall be let in separate contracts as follows:

First Class.—Bills for the two houses of the general assembly, resolutions and other matters ordered by such houses or either of them to be printed in bill form.

Second Class.—The Journals of the senate and house of representatives, and reports, communications and other documents which form part of the journals.

Third Class.—Reports, communications and other documents ordered by the general assembly, or either house thereof, or by the executive department or elective state officers to be printed in pamphlet form.

Fourth Class.—General and local laws and joint resolutions.

Fifth Class.—Blanks, circulars and other work for the use of the executive departments, and elective state officers, not including those to be printed in pamphlet form.

Sixth Class.—The bulletins of the agricultural commission.

Seventh Class.—The report of the secretary of state, auditor of state, the 'Ohio General Statistics,' reports and opinions of the attorney general, and all matter ordered by the general assembly or either branch thereof, other than contained in the third class, and other reports and documents required to be bound not including the laws, joint resolutions and journals of the senate and house of representatives.

The printing for the seventh class may be let in one or more contracts, as the commissioners of public printing in their discretion may require."

Sections 773 and 774, General Code, were not disturbed in any way at this time.

In 1925 Section 754, General Code, was again amended to read as it now reads:

"The printing for the state shall be divided into six classes and each class shall be let in separate contracts as follows:

First Class. Bills for the two houses of the General Assembly, resolutions and other matters ordered by such houses or either of them to be printed in bill form, general and local laws and joint resolutions.

Second Class. The journals of the senate and house of representatives, and reports, communications and other documents which form part of the journals.

Third Class. Reports, communications and other documents ordered by the general assembly, or either house thereof, or by the executive department or elective state officers to be printed in pamphlet form.

General and local laws and joint resolutions.

Fourth Class. Blanks, circulars and other work for the use of the executive departments, and elective state officers, not including those to be printed in pamphlet form.

Fifth Class. The bulletins of the agricultural commission.

Sixth Class. The report of the secretary of state, auditor of state, the 'Ohio general statistics,' reports and opinions of the attorney general, and all other matter ordered by the general assembly or either branch thereof, other than contained in the third class, and other reports and documents required to be bound not including the laws, joint resolutions and journals of the senate and house of representatives.

The printing for the sixth class may be let in one or more contracts, as the director of finance in his discretion may require."

Sections 773 and 774 of the General Code were again not disturbed in any manner.

From a comparison of Section 754, General Code, as it read previous to amendment in 1925, and as it now reads, it is evident that the matter in the fourth class "general and local laws and joint resolutions" was removed from the fourth class, which it had constituted, and placed in the third and first classes. The matter which had constituted the fifth class, for years, namely—blanks, circulars and other work for the use of the executive departments, and elective state officers, not including those to be printed in pamphlet form—was moved up to constitute the fourth class, which was vacated when the matter formerly in such class was made part of the third and first classes. What was formerly the sixth class, "the bulletins of the agricultural commission" became the fifth class, and the seventh class became the sixth class.

The question thus arises, since the legislature in 1925 did not specifically amend or disturb Sections 773 and 774, General Code, to change the word "fifth" to "fourth", whether or not it intended that the subject matter of such sections 773 and 774, General Code, should still continue to be applicable to govern the printing and estimation of presswork of matter which for years previously had been included in the fifth class, but which had been changed to constitute matter in the fourth class.

It appears to me that since the history of these sections obviously discloses that the matter of present section 774, General Code, had for years been applicable solely to the subject matter, "blanks, circulars and other work for the use of the executive departments and elective state officers, not including those to be printed in pamphlet form", and when it is considered that the subject matter "the bulletins of the agricultural com-

mission" was added as an independent class—the sixth class, in 1891, and the subject matter of what is now sections 773 and 774, General Code, was not then or afterwards disturbed, to have application to matter of such class, it cannot be reasonably argued that the legislature in 1925, in moving the fifth class to the fourth and the sixth class to the fifth, and not disturbing sections 773 and 774, General Code, could have intended the subject matter of the last named sections to thereafter apply to matter in the fifth class—the bulletins of the agricultural commission.

Section 774, General Code, was not repealed by the legislature in 1925. It is a general principle of law that all statutes which have not been expressly repealed by the legislature must be harmonized and given effect, if possible, with other statutes that are in *pari materia* therewith.

It appears to me that a court would hold that the legislature intended such statute to continue to be applicable to matter changed to the fourth class to which it had been applicable for years previous thereto. Section 774, General Code, is in *pari materia* with section 754, General Code.

Section 773, General Code, containing the portion of Section 9 of the act of 1860, except the last sentence, which last sentence, as shown above, became Section 774, General Code, in 1910, was left unchanged when the amendment was made to Section 754, in 1925.

It will be observed that the first sentence of Section 773, General Code begins: "The printing for the *executive* documents embraced in the fifth class." A reference to section 754 shows that the fifth class does not have any application to "*executive*" documents", but that the matter in the fourth class, previous to 1925 in the fifth class, does concern executive documents. Also, the other portion of Section 773, General Code, refers to "letterheads, blank deed, and other open work." This reference can have no application to matter now in the fifth class, as the bulletins of the agricultural commission are obviously not "letterheads, blank deeds, and other open work." Therefore Section 773, General Code, still on the books unrepealed by the legislature, must be concluded to continue to have application to matter in the fourth class although such section was not amended in 1925 to change the word "fifth" in the first sentence of Section 773 to "fourth".

It is therefore my view that the subject matter of section 774, General Code, is applicable to matter now constituting the fourth class, and that in accordance with such section in estimating presswork for the fourth class, such statutory provision must be precisely followed and read into the state contract form if it is not exactly incorporated therein.

It is to be noted that the present yellow form of state printing contract, a copy of which you enclosed with your communication, lists six classes of state printing contracts. Hence, such form must have been made up since 1925, when section 754 was last amended, for several year previous to 1925 there were, as above indicated, seven classes of state printing. Paragraph 6 on page 2 of the "Specifications" of the yellow form of state contract submitted and referred to by you in your communication reads:

"In estimating the composition of the printing for the executive departments, embraced in the fourth contract, all work in script type, or of which script is the chief kind used, will be estimated as pica, and measured by the surface actually covered—not by the size of the sheet used. All open work, such as letter heads, blank deeds, and the like, will be estimated in the same manner; provided, no job shall be counted at less than one thousand ems. All work, other than script type, will be estimated according to the type actually used; provided, that when different kinds are used in a single job, it may be

measured and estimated proportionately for the different kinds used. In estimating presswork in the fourth contract, a quire will be considered twenty-four impressions of a side, or page, as the case may be, *or* twenty-four full sheets of such paper as the proper officer may furnish, with such matter as the printer shall be directed to put upon it. In no case will a charge be allowed for press work at less than a page, where it is practicable to fill a full page or broadside; provided, that no job of presswork shall be estimated at less than one quire." (*Italics mine.*)

Comparing the wording of section 774, General Code, quoted *supra*, with the wording of paragraph 6 of the Specifications, it seems clear that if the provisions of section 774 are mandatory the underscored word "or" in the Specifications should read "of". The history of Section 774 shows that the word "of" has always preceded the words "twenty-four full sheets."

Two possible views of this situation resulting from the amendment of section 754 may appear. First, it is possible that in making up the new yellow contract form in 1925, some time after the effective date of Amended Senate Bill No. 214 (111 O. L., 230-233) amending section 754, General Code, the then State Superintendent of Purchases and Printing believed that Section 774, General Code, no longer controlled the estimation of presswork in the fourth class and that he consequently was left free to incorporate what he saw fit in the specifications of the state yellow form of printing contract regarding the estimation of presswork for the fourth class; or, secondly, it is arguable that the then Superintendent of State Purchases and Printing felt that Section 774 should continue to be applicable to the former matter of the fifth class changed to the fourth class, and directed the printer to whom the contract for printing the state yellow form contract was given, to insert the word "of" where the word "or" now appears, but that the said printer misprinted the word by mistake, and it was never noticed thereafter by the then State Superintendent of Purchases and Printing or by any later superintendent. I am inclined to believe that the latter situation is the most plausible one. As for the words "as the case may be" after "side or page", in paragraph 6 of the specifications, it is to be noted from the history of Section 774, set forth *supra*, that this phrase appeared in the wording of the last sentence of Section 9 of the Act of 1860, and of the last sentence of Section 326, Revised Statutes. Upon carrying the last sentence of Section 326, Revised Statutes, into the General Code of 1910 as Section 774, General Code, the codifying commission dropped the words "as the case may be" following the phrase "side or page." I am of the view that the codifying commission considered the phrase "as the case may be" surplusage and did not intend to change the meaning of the statute in any way. There is a presumption that codifying commissions do not intend to change the meaning of a revised statute by a slight change of phraseology. A court is only warranted in holding the construction changed when the intent of the legislature to make such change is clear and manifest. See *Insurance Co. vs. McBee*, 85 O. S., 161, 173; *Cincinnati vs. Railroad Company*, 88 O. S., 283, 291; *Elmwood Place Company vs. Schanzle*, 91 O. S., 354, 357; *Myers, Treasurer, vs. Rose Institute*, 92 O. S., 238, 247, 248; *State vs. Bushnell*, 95 O. S., 203, 209; *Mutual Electric Co. vs. Pomeroy*, 99 O. S., 75, 79, 80; *State vs. Williams*, 104 O. S., 232, 240, 241 and *Marqua vs. Martin*, 109 O. S., 56.

The yellow form of state contract still employs the phrase "as the case may be" after "side or page", conforming to the exact wording of Section 774, prior to 1910. There is nothing to prevent this being inserted, in my estimation, as under the doctrine announced by the cases in the preceding paragraph, Section 774, General Code, is un-

doubtedly to be construed as contemplating their meaning to be still read into such section.

Your first specific question may now be answered. Having come to the conclusion that Section 774 is applicable to control the estimation of presswork in the fourth class, it follows that when the word "of" is read into the yellow form of contract in place of the word "or", the printer may not be paid on the basis of single copies of the matter of the fourth class to be printed, although the sheets furnished him by the proper officers of the State are of a size sufficient for him to print a number of copies on a single sheet at one impression.

As for your second question, neither the statutes nor the yellow form of state contract make provision for charges by the printer for other than composition or presswork.

Inasmuch as the statutes provide only for charges for composition and presswork, it seems clear that the legislature did not intend that charges be made for any other work or expense of the printer. The statutes definitely set forth in detail the manner and extent of computing charges for state printing. Therefore, it would seem that the legislature did not intend that the State Superintendent of Purchases and Printing should be allowed independent power to provide for the allowance of other charges than those set forth in the statutes for composition and presswork.

Hence, I am of the opinion, in specific answer to your second question, that charges may not be made by printers of the various classes of printing, for extra work such as alterations, make-up, lock-up, binding, type rental, and the like.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4359.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY,
OHIO, \$100,000.00.

COLUMBUS, OHIO, June 24, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4360.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$20,000.00
(UNLIMITED)

COLUMBUS, OHIO, June 25, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.