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PRINTING OF STATE, SEVERAL DEPARTMENTS AND DIVISIONS—AUTHORITY TO REQUEST THROUGH DIVISION OF PURCHASING AND PRINTING OF DEPARTMENT OF FINANCE, AFTER MAKING GENERAL CONTRACT FOR PRINTING, NECESSARY CHANGES AND ADDITIONS—DEPARTMENTS AND DIVISIONS MAY PAY FOR CHANGES AND ADDITIONS OUT OF APPROPRIATIONS TO THEIR SEVERAL OFFICES—TERMS—BIENNIAL APPROPRIATIONS ACT—SECTION 125.47 ET SEQ., RC— OPINION 4358, PAGE 718, OAG 1935, MODIFIED.

## SYLLABUS :

Notwithstanding the provisions of Section 125.47 et seq. of the Revised Code, regulating the award of contracts for the printing of the state, the several departments and divisions of the state have the authority to request through the division of purchasing and printing of the department of finance, after the making of a general contract for such printing, such changes and additions as are found necessary and such departments and divisions may pay for such changes and additions out of the appropriations to their several offices, in accordance with the terms of the biennial appropriations act. Opinion 4358, page 718, Opinions Attorney General for 1935, modified.

Columbus, Ohio, April 22, 1955

Division of Purchasing and Printing  
Department of Finance  
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion, reading as follows :

“Section 125.47 states that ‘the printing for the state shall be divided into six classes, and each class shall be left in separate contracts as follows :

“An em is a unit of measurement of composition. A token is a unit of measurement of press work. Bids for the above mentioned contracts are quoted on the factors of printing ems and tokens. In general, these two quotations cover the great bulk of the dollar volume of the state’s printing work. However, on many printing orders there are other bona fide charges, such as alter-

ations requested by the ordering department; make-up; lock-up; binding, in such cases where it is necessary to send some small amounts for binding outside; colored ink; etc.

“AGO Number 4358 of 1935 states that charges may not be made by bidders of the various classes of state printing for such extra work as I have just listed. I find, however, that ever since this opinion was requested by State Auditor Tracy, and rendered by Attorney General Bricker, bona fide charges for such extras have always been honored and authorized for payment during the ensuing twenty-year period.

“It is quite obvious that any bona fide charge necessary for completion of a printing order over and above the quotation of ems and tokens must be paid for in some manner. It is therefore my opinion that the thought of the Attorney General at that time must have been that such extra charges could not be made against the contract, which is for ems and tokens only. I am therefore requesting an opinion as to how you feel these extra charges can legitimately be paid for if they are bona fide, and the prices charged for same are reasonable.

“We have explored the possibility of endeavoring to write into the specifications of the printing contracts full coverage of every factor that might enter into any printing order, and for what charges might be made over and above the specification factors of ems and tokens.

“Because almost every individual printing order has some different characteristics I do not believe that it would be either practical or economical to attempt to draw up a contract whereby the bidder would quote in advance a satisfactory price of every conceivable factor of cost other than cost of ems and tokens.”

By the provisions of Section 125.31 et seq., of the Revised Code, the public printing required for the several state departments is placed under the supervision of the department of finance, the division of purchasing and printing being an arm of that department. Section 125.31 reads as follows:

“The department of finance shall have *supervision* of all public printing. It may determine, except as otherwise specifically provided by law, the number of volumes into which each publication shall be divided, the manner of binding, quality of paper, and kind of type to be used in all reports, publications, bulletins, or pamphlets published at the public expense.”

(Emphasis added.)

The general regime for carrying out this authority is set forth in Sections 125.47 et seq., Revised Code, Section 125.47 reads as follows:

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

“(A) First Class. Bills for the two houses of the general assembly, resolutions and other matters ordered by either of them to be printed in bill form, general and local laws, and joint resolutions ;

“(B) Second Class. The journals of the senate and house of representatives, and reports, communications, and other documents which form part of the journals ;

“(C) 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 ;

“(D) 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 ;

“(E) Fifth Class. The bulletins of the department of agriculture ;

“(F) 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 matter ordered by the general assembly or either house 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 requires.”

Section 125.49, Revised Code, reads as follows :

“Each proposal for state printing shall state specifically the price at which the bidder will undertake to do the work in the classes of printing covered by such proposal, as follows :

“(A) The price per thousand ems for the composition of the matter embraced in the six classes ;

“(B) The price per token for presswork embraced in all such classes except the fourth class ;

“(C) The price per quire for the presswork embraced in the fourth class.”

The difficulty that appears to have grown out of the provisions of these sections probably stems from the requirement that each proposal must be based on the “price per thousand ems”, the “price per token”, and

the "price per quire." This certainly does not preclude a requirement in the specifications that the proposal must also be for a complete job of printing.

It would seem obvious that the prices offered pursuant to the above statutes should include all such items as the original "make-up," "lock-up", and all other actions and processes that are regularly involved in a job of printing. The specifications for such printing ought to be so worded as to include therein everything which it is possible to determine definitely in advance, so that the rates bid for composition and press work would be definite and binding, and the entire work, so far as possible, be let on competitive bidding.

Your problem, however, appears to go outside of the field in which these actions and processes can be definitely fixed in advance. When you speak of "make-up", "lock-up", and other extra services, I am assuming that they are matters that arise after the contract is made, and after the work is started; possibly after proofs have been submitted. It is very certain that no department could be expected to prepare the matter for its large array of printed matter so exactly as to avoid the necessity of making changes and substitutions after it has been set up and in proof form. It appears to be inevitable that in securing the desired result the original ideas of the department heads are bound to be subject to modification or change in a great variety of particulars. Mistakes in the original copy may have been made. New matter may possibly have to be inserted and old matter eliminated. The form of display as originally conceived may be subject to radical changes. Cuts or engravings may be added or withdrawn.

All of these and other changes, while individually small, might involve a very considerable amount of work on the part of the printer, which was not contemplated in his bid, and for which specifications could not possibly have been prepared. And certainly, no printer would ever bid on specifications which required him to absorb all the changes, additions and substitutions which the ideas of a division chief might bring forth.

It must be remembered that the director of the department of finance acts only as the agent of the various state departments and as such he must be subject to their directions at all times as to the matter which they desire to have printed, and as to the form in which they wish to have it printed. The original payments to the printing contractor are, as I understand, made out of rotary funds under your control, and the cost of print-

ing for each department or division is then billed to it and paid by it out of funds appropriated to its use by the General Assembly.

As a matter of fact, I do not find in Section 125.47 et seq. supra, any express prohibition against the making of changes, or forbidding payment for extra services required in the progress of the work. Hence, I do not consider that we are forced to the conclusion that the failure of the law to provide specifically for emergency purchases or service, amounts to a prohibition. The most that can be said is that the statutory procedure is somewhat uncertain and incomplete.

An examination of the biennial appropriation act for the expenses of the several departments and divisions of the state, in the form in which that act is usually passed, will disclose that as to each such department and division there is contained an item for "paper, printing and binding." Out of this appropriation each such department or division reimburses the division of purchases and printing for the cost of the printing work done on its behalf. In the general appropriation act there is regularly contained a provision to this effect:

"If any order or invoice drawn against any appropriation, reappropriation or rotary fund herein made is for labor and materials furnished, the aggregate cost of which exceeds one thousand dollars (\$1,000.00) or for commodities purchased, at a cost in excess of one thousand dollars (\$1,000.00), it shall show that the same was furnished or purchased pursuant to competitive bidding and that the lowest or best bidder was awarded the contract, unless the controlling board shall have authorized the furnishing of such labor or material or the purchase of such commodities without competitive bidding, provided, however, that the controlling board shall authorize the furnishing of such labor or material or the purchase of such commodities without competitive bidding only after it has been determined that an emergency exists requiring such action."

The inference from this provision is irresistible that with reference to "labor and materials" required by any department or division to which the appropriation has been made, involving an expenditure of less than one thousand dollars, it is within the authority of that department or division to procure and pay for the same. If more than one thousand dollars is involved it must obtain the authorization of the controlling board.

Accordingly, it appears to me that if in procuring its printing any department or division finds it necessary to ask you to procure services

or material required by changes which it finds necessary to make, it would have abundant authority to direct you to procure such changes at its expense, and you are authorized to bill such department for payment out of its appropriated funds, providing the change does not in any instance exceed \$1,000.00. Any other course would appear to me to be destructive of good business administration of the affairs of the state.

You call my attention to an opinion of one of my predecessors, being Opinion 4358, Opinions of the Attorney General for 1935, at page 718, the syllabus of which is as follows :

“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.”

It appears to me that only the second branch of the syllabus is really involved in the question here under consideration. It will be observed that in that opinion only slight attention was paid to the matter involved in the second branch. The entire opinion so far as it relates to that subject, reads as follows :

“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.”

(Emphasis added.)

I am not entirely certain as to the intended scope of the holding in that opinion. If the then attorney general had in mind the processes which were involved in the primary set-up of the printed matter, I can agree that the printer could not charge and you should not pay extra charges for such matters as should have been included in the specifications. But if he meant to include such after arising changes as your letter refers to, then I cannot agree. It does not appear to me that the writer of that opinion could have comprehended the handicap that would be placed on the various departments of state by his ruling, and that his conclusion as to "alterations" is not warranted by the statutes referred to, if we are to give them an interpretation consistent with the obvious necessities of good public service.

In the construction of statutes it is a well recognized principle that a statute will not be so construed as "to make it unjust, oppressive, unreasonable, absurd, mischievous, or contrary to the public interest." Crawford on Statutory Construction, Section 177. Applying that principle in order to deny the several departments the right to make and pay for necessary alterations, we would be forced to read into the statutes which I have quoted an intent to impose restrictions on public officers that would greatly hamper the orderly conduct of public business and be contrary to public interest. That, I do not think we are called upon to do. On the contrary, we should seek to so interpret and apply the law as to make it workable.

In addition to the reasons which I have outlined, I am impressed with the statement in your letter that the invariable practice for many years has been to pay these bills, and while such a course cannot change the law, a certain degree of respect must be given to long established administrative practice.

Accordingly, it is my opinion that notwithstanding the provisions of Section 125.47 et seq. of the Revised Code, regulating the award of contracts for the printing of the state, the several departments and divisions of the state have the authority to request, through the division of purchasing and printing of the department of finance, after the making of a general contract for such printing, such changes and additions as are found necessary, and such departments and divisions may pay for such changes and additions out of the appropriations to their several offices, in accordance

with the terms of the biennial appropriations act. Opinion 4358, page 718, Opinions Attorney General for 1935, modified.

Respectfully,

C. WILLIAM O'NEILL

Attorney General