

County Printing—Duty of County High School Board and County Fair Board to Give Printing to the County Printer.

It is the duty of the County High School Board and the County Fair Board to give their printing orders to the printer contracted with by the County Commissioners.

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My dear Mr. Gray:

I have your letter in which you ask whether it is necessary for the County High School Board and the County Fair Board to give their printing orders to the county printer the same as other county printing work.

Both the County High School and the County Fair are county institutions. The general principle of law with regard to county officers and their power to contract is found in 15 C. J. 540, and is as follows:

"A county is not bound by a contract beyond the scope of its powers or foreign to its purposes, or which is outside the authority of the officers making it. In this connection it is the rule that the authority of a county board to make contracts is strictly limited to that conferred, either expressly or impliedly, by statute, regardless of benefit to the county or of value received; and the same is true as to other county officers attempting to contract in behalf of the county. * * * All persons dealing with officers or agents of counties are bound to ascertain the limits of their authority or power as fixed by statutory or organic law, and are chargeable with knowledge of such limits. No estoppel can be created by the acts of such agents or officers in excess of their statutory or constitutional power."

Section 4482 of the Revised Codes of 1921, which covers the subject of county printing contracts, is in part as follows:

"It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, published at least once a week, and of general circulation, * * * to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank-books, stationary, election supplies, loose-leaf forms and devices, official publications, and all other printed forms required for the use of such counties, at not more than the following prices:
* * * "

This section was under consideration by our Supreme Court in the case of Hersey v. Neilson, 47 Mont. 132, and the constitutionality of the statute was upheld. The court there said:

"The manner in which printing contracts shall be let is one of legislative or governmental policy, a question with which the courts have nothing to do."

In the case of *Hill County v. Shaw & Borden Co.*, 225 Fed. 475, where the Federal court had under consideration the construction of this section, the following language was used:

"It will be premised that the plaintiff's contract was and is illegal and void because prohibited by law. The law requires the commissioners of the county to contract with some newspaper of the county, and the newspaper contracted with to sublet, if at all, to some newspaper of the state. The requirement is a prohibition against contracting with any other parties than those specified, and any contract in derogation thereof is nugatory and void."

The court quoted from the California Supreme Court in the case of *Swanger v. Mayberry*, 59 Cal. 91, 94, as follows:

"The general principle,' says the Supreme Court of California, 'is well established that a contract founded on an illegal consideration, or which is made for the purpose of furthering any matter or thing prohibited by statute, or to aid or assist any party therein, is void. This rule applies to every contract which is founded on a transaction *malum in se*, or which is prohibited by statute, on the ground of public policy.'"

The court, however, in this case held that where a contract for the purchase of property which has been converted by the buyer was merely *malum prohibitum* and did not contravene public policy, and if no penalty was imposed for a violation of the statute, there could be a recovery on a quantum meruit or of the property itself or in trover.

However, in the case of *School District No. 2 v. Richards*, 62 Mont. 141, 205 Pac. 206, our Supreme Court held that where a contract was entered into by a school board in violation of the provisions of the statute requiring advertisement for bids to be published that a recovery could be had of the purchase price where it was impracticable or impossible to restore the subject-matter of the contract.

15 *Corpus Juris*, at page 544, lays down the following rule with reference to the duty of county boards to contract for county printing:

"By virtue of statutory provisions, it is generally within the power, and it is the duty, of a county board to contract for all county printing and stationery."

In the case of *Sparks v. Kaufman County*, 194 S. W. 605, it is held that a county clerk has no authority to acquire new typewriters, by purchase or exchange, or expend money for postage stamps, although such supplies are necessary in conducting his office, such authority being reposed in the county commissioners, if in anyone.

To the same effect is the case of *American Disinfecting Co. v. Freestone County*, 193 S. W. 440.

I am, therefore, of the opinion that only the Board of County Commissioners has authority to contract for county printing and that in any event county printing must be done by the paper holding the county contract.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.