

Printing Contracts. County Commissioners, Powers to Bind Successors by Contract.

Sec. 4433 of the Political Code does not require the commissioners to ask for bids for the county printing, and gives the board authority to enter into contracts with any paper in their county which, in their judgment, is most suitable for performing the work. Such contracts not being required to be let on competitive bidding and no necessity existing for the entering into contracts for long periods of time, it is against public policy for the board of county commissioners whose term of office is about to expire to let such a contract which will bind the newly elected board.

Helena, Mont., Dec. 10th, 1906.

Hon. Roy E. Ayers,
County Attorney,
Lewistown, Mont.

Dear Sir:—

Your letter of the 5th inst., supplementing your request over the telephone for an opinion upon the following question, received.

"Can a retiring board of county commissioners enter into an agreement or contract on the eve of their going out of office, for two years' county printing, and thus bind the hands of the incoming board?"

In our conversation with you over the telephone, we intimated that such a contract might be entered into, but, before giving an opinion, wished to thoroughly investigate the matter and requested you to submit the question in writing, as stated above.

We have made a careful investigation of the authorities upon this question and find that they practically all support the general rule, which is stated in Cyc. Vol. 11, p. 469, as follows:

"The general rule is that contracts extending beyond the term of the existing board and the employment of agents or servants of the county for such period, thus tying the hands of the succeeding board and depriving the latter of their proper powers, are void as contrary to public policy, at least in the absence of a showing of necessity of good faith, and public interest."

There is certainly no necessity for making contracts with county printers for any great length of time. They stand upon altogether a different basis than a contract for the erection of a public building which might be entered into by the old board and from the nature of the work could not be completed before the expiration of the term of such board.

Under section 4233 of the Political Code, which provides for the letting of contracts for county printing, the work is practically all piece work and ordered as needed by the county, and there is no necessity whatever for entering into long contracts extending beyond the period of the term of the retiring board.

The supreme court of Kansas, in *Robson v. Smith*, 32 Pac., p. 30, in discussing the same question you submit, used the following language:

"It is a matter of general publicity that in the election of county commissioners the selection of the official newspaper of the county enters more or less into the contest. The views of the candidates for commissioners as to what newspaper shall be designated the official paper of the county often determines the result. When the result of the election is legally declared, the will of the majority ought to be promptly and cheerfully acquiesced in. It does not seem fair or just for the old board, just as it is going out of office, to forestall the new board in the designation of the official newspaper of the county. There are no good reasons why the old board should be permitted to tie the hands of the new board in such a matter, and there are manifold and manifest reasons why they should not have that power. The same reasons for limiting contracts for general county expenditures do not exist as in designating the official paper of the county."

To the same effect, see also

Jay County v. Taylor, 23 N. E. 752, (Ind.);

State v. Platner, 23 Ia. 140;

Bacheron v. N. Y., 69 N. Y. Sup., 608;

Franklin County v. Ranck, 9 Ohio Cir. Ct., 301.

In our opinion the above quotation from the Kansas court completely answers your question, for, under said section 4233 of the Political Code, the county commissioners are not even required to ask for bids for county printing, but may, if they so desire, enter into a contract with any paper in their county that, in their judgment, shall be most suitable for performing said work, which has been published continuously in such county at least six months immediately preceding the awarding of the contract. The mere fact that the law does not require the board to call for bids and let the contract to the lowest bidder would indicate that it was the intention of the legislature that this matter should be left to the sound discretion of the board of county commissioners, therefore, we must hold that it is against public policy for the old board of commissioners, whose term of office is about to expire, to enter into a contract for work of the character of county printing which will be binding upon the newly elected board of county commissioners and thereby deprive them of the discretion they are given by the law in making such contracts.

Your opinion to the board of county commissioners is hereby affirmed.

Very truly yours,

ALBERT J. GALEN,

Attorney General.