

Public Printing, Union Label On.

The publication of the State Treasurer's Quarterly Report by the Governor, in a newspaper to be by him designated, is not such printing as is contemplated by the Laws of 1897, page 58, requiring the Union Label to be attached to all printing for which the State of Montana is chargeable.

Helena, Montana, March 29, 1907.

To the State Board of Examiners,
Helena, Montana.

Gentlemen:—

At the last meeting of the State Board of Examiners there was referred to this office two claims presented against the State by the

Helena Independent Publishing Company for the publication in the daily newspaper published by said Company, of the State Treasurer's Quarterly Report, with the request that we investigate them and advise you whether or not they can be allowed in view of the provisions of the Act approved March 3rd, 1897, Laws of 1897, page 58, requiring the Union Label to be affixed to all printing for which the State of Montana is chargeable. In this connection, it appearing, that said newspaper in which said reports were published did not have the typographical labor union label printed thereon.

After mature and careful consideration of the question presented, and the applicability of said law to this class of printing, we are of the opinion that this law in no way effects the legality of the claims presented, and that if constitutional, it cannot be construed to apply to the publication of the Treasurer's Report in a newspaper on direction of the Governor, as required by the provisions of Section 448 of the Political Code.

The Act in question (Laws 1897, page 58), provides:

"All printing for which the State of Montana is chargeable, including reports of State Officers, State Boards, pamphlets, blanks, letter heads, envelopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, shall have the union label."

Section 2 of this Act makes the use by officers of any of the above matters not bearing the Union Label a penal offense.

Section 30, Art. V, of the State Constitution provides, in substance, that all stationery, printing, paper, fuel and lights used by the departments of the State Government, shall be furnished under contract, which contract must be awarded to the lowest responsible bidder. Section 704 of the Political Code makes it the duty of the State Furnishing Board to enter into this contract for all printing for State purposes, but the terms of the statute do not add to the provisions of the Constitution. Section 444 of the Political Code, after providing that the Treasurer shall at the end of each quarter of the fiscal year report to the Governor in writing, says:

"The Governor must verify said report and cause the same to be immediately published in at least one newspaper printed at the Seat of Government."

Under the provisions of Section 704, supra, it is within the power and prerogative of the State Furnishing Board to enter into the contract there provided for with any person or persons, firm or corporation, which said Board may deem to be the lowest responsible bidder; while under the provisions of Sec. 448, supra, it is the function and prerogative of the Governor, independent of the Board, to designate the paper in which this report of the Treasurer shall be published. Again, neither the Constitution, nor this Statute (Sec. 704), either directly or impliedly, include within its terms and meaning the publication of such report, but this is an independent matter provided for only in Section 488 of the Political Code. The publication of this report is thus not included

within the contract made by the State Furnishing Board, but is a matter independent thereof and additional thereto.

Now the terms of the Session Law above quoted relate only to printing while the Statute requiring the publication of such reports (Sec. 448), relates to publishing. "Printing" and "Publishing" are not synonymous terms, nor are they at any time synonymous in meaning, at least, within the strict construction which must be given to a penal statute, such as the Session Law above referred to. "To print" means to impress, impression, mark, stamp, etc., while "publish" means to promulgate, proclaim, make known, to notify the public. The word "printing" as used in the Session Law cannot mean any more than to put in the form of a record, or to prepare for distribution or preservation, to file, or something of that kind; but these things are not a publication, for a thing may be printed and never be made known or promulgated so far as the public are concerned. The publication must come after the printing, and, as applied to printed matter, a publication is the distribution of a thing after it is printed. The object of publishing these reports is to make them known to the public. The newspaper in which they are published is the medium through which this is done. The Governor is given authority and discretion to name the medium. He is presumed to name a medium which will best subserve the purpose for which the report is published; that is, to notify the public, and the law does not restrict him to any class of papers whatsoever, except that it must be "a newspaper printed at the Seat of Government;" and "publishing" not being included within the term "printing" as used in the Session Law, it necessarily follows that this Session Law has no application to the publication of these reports.

As to the constitutionality of this statute we express no opinion, as it is not necessary in determining the question presented. But it may not be amiss to call your attention to the decision in *State vs. Toole*, 26 Mont. 22.

Respectfully submitted,

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Attorney General.