

Public Printing, Contract for. Board of County Commissioners, Power of. Newspaper, Right of to Contract.

The mere fact that a newspaper has been published in a county for six months prior to the awarding of contract does not of itself entitle the newspaper to the contract. The Board of Commissioners is clothed with discretionary powers and may let the contract to some other newspaper in the county.

February 18, 1915.

Hon. D. M. McGrath, Jr.,
County Attorney,
Malta, Montana.

Dear Sir:

I am in receipt of your letter of the 12th instant, requesting my opinion:

As to whether the county commissioners of Phillips County are compelled by virtue of the provisions of Section 2897, Revised Codes of Montana, 1907, to contract with some paper of general circulation published within the county, and having been published continuously in such county for more than six months prior to the letting of the contract?

Section 2897 Revised Codes, has been held to be constitutional, and a valid exercise of legislative power and control over counties.

Hersey vs. Neilson et al., 47 Mont. 132.

So much of the section as is pertinent to the present inquiry reads 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 of general circulation, published within the county, and having been published continuously in such county at least six months immediately preceding the awarding of such contract. * * * The contract shall be let to the

newspaper that in the judgment of the county commissioners shall be most suitable for performing said work. * * *
Provided, That nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work."

The mere fact that a newspaper published in the county has the statutory qualification of having been published for at least six months preceding the awarding of the contract, does not of itself entitle such newspaper to the contract to the exclusion of other newspapers of general circulation, which have been published for a lesser period. It will be noted from the excerpts of the section above quoted that the Board is undoubtedly clothed with discretionary power in the matter, and while it must let the contract, it shall be to the paper which in the judgment of the Board will be most suitable for performing the work. The Board is not obliged to accept unsatisfactory work, and if in its judgment a newspaper having the statutory qualifications will not do its work satisfactorily, the Board may not be compelled to let the contract to such a newspaper, for the law does not require the doing of useless things. If, therefore, the Board, in the exercise of the discretion with which the law clothes it, determines in advance that a certain newspaper, while having the statutory qualifications to entitle it to the contract, will not do satisfactory work, the Board certainly may look elsewhere to have the public printing done, and may let the contract to some other newspaper of general circulation in the county, even though such paper has not been published therein continuously for a period of six months immediately preceding the letting of the contract. In such a case the "six months" required must give way to the more important requirements, that the newspaper doing the work shall be suitable for performing it, and will do satisfactory work.

Yours very truly,

D. M. KELLY,

Attorney General.