

June 21, 1933.

According to your letter to us of recent date you have advertised for bids for the publication of the quarterly report of the State Treasurer, and desire to know whether or not, when the bids are opened on the 5th of July, you should enter into a contract in behalf of the State of Montana, with the lowest responsible bidder, or at all, for such publication.

Under the provisions of Section 13 of Article XII of the Constitution and of Section 1, Chapter 6, Laws of 1925, the Governor must cause the quarterly report of the State Treasurer to be published in a newspaper printed at the seat of government. Section 2 of said Chapter 6 makes it the duty of the State Purchasing Agent to advertise annually for bids for such publication, and Section 3 thereof requires him to let the contract therefor, subject to the approval of the State Board of Examiners, to the lowest responsible bidder, for a period not longer than one year and at a price not to exceed \$2000.00.

Contrary to custom, the legislative assembly at its last session failed to appropriate any money for the publication of the state treasurer's quarterly reports in the fiscal year beginning July 1, 1933, and the fiscal year beginning July 1, 1934.

Must the State Purchasing Agent let the contract to, and must the Governor cause the treasurer's quarterly report to be published in the newspaper which is the lowest responsible bidder, notwithstanding the fact that there is no fund out of which payment for the publication can be made? Assuredly not.

Opinion No. 248

**State Treasurer, Publication of Report
—Report—State Purchasing Agent
—Governor—Appropriations
—Legislative Assembly.**

HELD: No duty rests upon the State Purchasing Agent to let the contract or upon the Governor to cause to be published the State Treasurer's quarterly report when the legislative assembly fails to appropriate any money to pay the cost of such publication.

Could the writ of mandate be successfully invoked against the Governor or the State Purchasing Agent for refusing to act under the circumstances here existing? We do not think so. While there is authority to the contrary, it is generally held that a public body will not be required to do something which is not possible of accomplishment through want of funds and inability to raise them, and the same principle applies to a public officer. (38 C. J. 556, 806.)

The blame for failing to carry out the command of the Constitution and laws cannot, in this instance, be laid at the door of either the Governor or State Purchasing Agent.