

Opinion No. 338**Claims—Legality—Contracts.**

HELD: Claim No. 582498 filed by the Montana Stained Glass Company, by reason of the facts recited and because it is not based upon a contract made according to either Chapter 149, Laws of 1927, or Chapter 66, Laws of 1923, is illegal.

September 16, 1933.

With reference to Claim No. 582498, in the sum of \$2219.88, filed by Montana Stained Glass Company, please be

advised that this claim was transmitted to your office without my signature, without my consent, and without my knowledge. After it had been transmitted I received the information that it had been sent to you.

The facts, as outlined in your request and as supplemented by my own knowledge, are as follows:

The claim is for materials presumably used on the Capitol dome, sky-lights, portions of the roof and one or two smaller jobs. The amount exceeds \$500.00, on each of the major projects. There is no contract for any of the work, excepting repairing stained glass and sky-lights, in which instance a contract executed by two members of the board is on file, in the office of the Board of Examiners. This contract fixes no specific amount, but provides for payment of materials at 17% under "list" price.

The Montana Stained Glass Company, does not appear from the records of the office of the Secretary of State to be a corporation, but is a name under which one Elwood Von Zimmer is doing business. Elwood Von Zimmer, who signed the claim as the manager of Montana Stained Glass Company, is the same person as K. E. Von Zimmer who signed the contract for the stained glass work in the sky-lights, and who appears on the payroll for a number of weeks work as foreman on all the work above mentioned.

The approving stamp of the custodian does not designate against what account the claim is to be charged but pasted to the claim is a slip of paper bearing the inscription "Other Operations No. 5473." A notation near this slip asserts that the claim was submitted by the claimant with that notation attached.

Chapter 149, Laws of 1927, provides that no contract shall be made by the Board of Examiners, or any state officers, for the repairs or alterations or improvement of any building in excess of \$500, except upon advertisement and competitive bids. It further provides that any contract which directly or indirectly recognizes the cost plus system shall be invalid.

The claim does not disclose the exact purposes for which the material was used. Assuming, however, that the pro-

jects might be so subdivided that the claim could be reduced to separate jobs of less than \$500 each, then Chapter 66, Laws of 1923, as amended, would apply. This chapter provides that the purchasing agent shall purchase all articles required by the institutions, boards and departments of the state. Such purchases shall be made by means of bids.

That chapter further provides that no person in the employ of the State of Montana in any capacity whatsoever shall directly, or by any other person for his use, enjoy the benefits of any contract under said act.

By reason of the law stated and under the facts recited it is my opinion that the claim is illegal.