

Opinion No. 568

County Printing—Contracts, Sub-Letting—Contracts, Assignment.

HELD: Under Section 1, Chapter 10, Laws of 1929, a newspaper is not only permitted but is positively commanded to sublet in the event it should not be able to execute any part of the contract for county printing.

Printing contracts for county printing cannot be assigned.

A new agreement or contract is not required by the statute where the printing contract is so sub-let, and will be unnecessary unless required by the original contract.

July 7, 1934.

You have requested an opinion as to whether or not Lewis and Clark County is to continue its contract with the Helena Independent for county printing, it appearing that because of a strike, the Independent is unable to furnish the printing from its own plant but must sub-let or procure the printing elsewhere.

The following sentence, found at the end of Section 1, Chapter 10, Laws of 1929, is so clear that we do not see how anyone reading it can mistake its intent: "All newspapers which may receive any contract for printing under this act, and which may not be able to execute any part of such contract, **shall be required to sub-let such contract or portion of contract** to some newspaper or printing establishment within the state, which shall do the work under contract so sub-let entirely within the state with Montana labor." It would appear that the legislature not only intended to permit a newspaper to sub-let but positively commanded it to do so in the event it should not be able to execute any part of the contract.

Your second inquiry raises the question whether or not the contracting newspaper may **assign** the balance of the contract to some other printing concern, or whether they can hire some other concern to perform the balance of said contract.

We think the contract cannot be as-

signed. The statute commands that such work must be **sub-let**. There is a broad distinction between **sub-letting** and **assigning**. We quote the following to indicate briefly what this distinction is: "Where a contractor sublets the whole or a part of the labor to be performed by him the party with whom he contracts is designated a sub-contractor." (30 American and English Encyclopedia of Law, 2nd Ed. 1195.) "Unless expressly restricted by the terms of the contract the builder is not necessarily required personally to perform the work but may sublet it." (9 C. J. 735.) "In the absence of an express contract making the owner liable, the compensation of persons who perform labor for, or furnish materials to, the builder who has undertaken to perform the work is generally to be paid by such builder, and not by the owner, * * *." (9 C. J. 835.)

Next you inquire whether or not the person to whom the work is sub-let must enter into a new agreement with the county. The statute does not require it and we assume, since you failed to say that the contract required it, that the contract itself makes no mention of the matter. The rule is well settled that in cases of contracts of this general nature the contractor need not secure the consent of the other party in order to sub-let the whole or a portion of his contract.