Opinion No. 569

State Printing—Union Label—Constitutional Law.

HELD: Section 260, R. C. M., 1921, requiring all state printing to contain the label of the International Typographical Union, is constitutional.

July 7, 1934.

We acknowledge your request for an opinion as follows: "Complaint has been made to this office that printing for the State of Montana has been delivered to the state purchasing agent which did not contain the label of the International Typographical Union. As we understand it this is in violation of Section 260, Chapter 18 of the Revised Codes of Montana, 1921. Will you kindly give us an opinion as to the validity of this statute and whether or not a printing establishment not

having a union label, may legally do state printing?"

Except as limited by the Constitution of the United States or by the Constitution of the State, the State, in its sovereign capacity, has the right to enter into contracts at least to the same extent as individuals. The right of individuals to enter into contracts for the employment of certain kinds of labor has been before the courts and generally has been sustained.

No one has suggested wherein the regulation in Section 260, R. C. M., 1921, contravenes any provision of the Constitution of the United States. Your request for opinion does not suggest wherein the provision contravenes any provision of the Constitution of the State of Montana.

It can be argued that Section 30 of Article V of the Montana Constitution, which requires all printing to be given to the lowest responsible bidder, might render invalid a statute regulating the letting of printing under the condition stated. The only Montana case which seems to come near the question is that of State ex rel. Robert Mitchell Furniture Co. v. Toole, 26 Mont. 22. In that case the State Furnishing Board let a contract for furniture to the lowest bidder. Subsequently, by reason of objections from many labor unions that the Furniture Company was unfair to organized labor, the contract was cancelled. The Court held that the contract could not be cancelled upon that ground.

There is a considerable distinction between the question in that case and the question here presented. There is no statute which commands the cancellation of contracts upon the ground that the person who already has received a contract for the furnishing of furniture or similar commodities is not fair to organized labor. In the question presented there is a definite statute that printing must bear the union label, so that, in the case now presented the question is as to the power of the legislature, while in the case cited the question was as to the power of the Board in the absence of authority from the legislature.

In that case is cited the case of Adams v. Brenan, 177 Illinois 194, which held that a board of trustees of a school district had no power to insert in an advertisement for bids the statement that none but union labor should be employed in the work to be performed. The Court held that the board had no power to insert such a provision. In that case again, it does not appear that the legislature passed any law which gave the board such power. It is true the Court said that the legislature itself would not have any power to make such a restriction. That statement, however, was **obiter dictum,** for the question of the power of the legislature was not before the Court, nor was the statement supported by any authority in point.

It will be observed that, in Section 30 of Article V, it is provided that the printing shall be let to the **lowest responsible bidder under such regulations as may be prescribed by law.** Whether or not the requirement of a union label on printing is a "regulation" which the legislature might "prescribe by law" under the constitutional provision mentioned, is a matter which would be productive of prolific dispute. In the absence of any decision by the Supreme Court of this state upon the subject, we are inclined to advise you that public officers should indulge the presumption, many times repeated by our Supreme Court, that a statute is constitutional. For the reasons foregoing, until the Supreme Court has held otherwise, we shall take the position that the statute is constitutional.