

**Opinion No. 75.****Prison—Convict Labor—  
State Penitentiary.**

Held: Neither the warden of Montana State Penitentiary nor any state officer or board may enter into any agreement whereby convict labor will be contracted to any person or persons or corporation for the purpose of farming or for use in any other industry.

June 23, 1943.

Honorable Sam C. Ford  
Governor of State of Montana  
State Capitol  
Helena, Montana

Dear Governor Ford:

You, have requested my opinion on the matter of contracting convict labor on private farms and in other industry.

Article XVIII, Section 2, Montana Constitution, provides as follows:

**"It shall be unlawful for the warden or other officer of any state penitentiary or reformatory institution in the state of Montana, or for any state officer to let by contract to any person or persons or corporation the labor of any convict confined within said institutions."** (Emphasis mine.)

In conjunction with the above, the Montana legislature has enacted Section 12446, Revised Codes of Montana, 1935:

"The board may, in its discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits, and at hard labor, and furnish any convicts thus employed with any material that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the state prison, and the board shall, in all respects, have the exclusive control of the employment of the convicts, and may from time to time employ them in such manner as, in its opinion, will best subserve the interest of the state and the welfare of the prisoners. **But neither the board nor the warden must let by contract to any person the labor of any convict in the prison.**" (Emphasis mine.)

The provisions of the Montana Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. (Article III, Section 29, Montana; State ex rel. Mills v. Dixon, 66 Mont. 76, 84, 213 Pac. 227.) The rule prescribed by Article III, Section 29, Montana Constitution, that the provisions of the Constitution are mandatory and prohibitory, applies to every part of the Constitution. (State ex rel. Pierce v. Gowdy, 62 Mont. 119, 126, 203 Pac. 1115.)

Words used in the Constitution are presumed to have been employed in their natural, ordinary sense, and are to be taken and understood in such sense, unless the context in which they occur requires they be assigned a different meaning, or other provisions on the same subject limit, qualify, or enlarge their scope. (Rider v. Cooney, 94 Mont. 295, 309, 23 Pac. (2d) 261.) Where the provisions of the Constitution are plain, unambiguous, direct, and certain, the Constitution speaks for itself, and there is nothing for the court to construe. (Vaughn & Ragsdale Co. v. State Board of Equalization, 109 Mont. 52, 60, 96 Pac. (2d) 420.)

Article XVIII, Section 2, Montana Constitution, is plain, unambiguous, direct and certain. It expressly provides it shall be unlawful for the warden or for any state officer to let by contract to any person or persons or corporation the labor of any convict confined within said institutions. No language could be more direct or certain.

While many other states have constitutional provisions prohibiting the contracting of convict labor and American Jurisprudence, Volume 41, page 904, notes the modern sentiment is toward the abolishment of contract convict labor, a search of the authorities has revealed no cases which could be termed directly in point to the problem presented here. The Supreme Court of Utah, in the case of Price v. Mabey, 218 Pac. 724, had before it a question which involved the interpretation of a constitutional provision and a statute similar to our Article XVIII, Section 2, and our Section 12446. The language used there would indicate no relaxation of the constitutional and statutory prohibitions would be countenanced:

"The prohibition contained in (the statute), that no contract shall be made for the labor of prisoners con-

fined in the state prison, is determinative of this case. It is not disputed that if the contract . . . is a contracting of prison labor or hiring out of prison labor it is invalid."

It is my opinion that neither the warden of Montana State Penitentiary nor any state officer or board may enter into any agreement whereby convict labor will be contracted to any person or persons or corporation for the purpose of farming or for use in any other industry.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General