BOARD OF PROBATION AND PAROLES: Printing must be done in accordance with Public Printing Act.

December 22, 1942

FILED
13

Hon. Donald W. Bunker
Director of Probation and Parole
Jefferson City, Missouri

Dear Mr. Bunker:

Under date of December 17, 1942, you wrote this office requesting an opinion as follows:

> "We have been informed by the State Purchasing Agent and the State Auditor that all printed material for the Board of Probation and Parole must be ordered through the Commissioners of Public Printing in accordance with the provisions set forth in Section 14992 of the Revised Statutes of Missouri for 1929.
>
> "It is the contention of the Board of Probation and Parole that:
>
> "1. The law referred to was passed in 1929, eight years before the Board of Probation and Parole was created by the Legislature of 1937, and therefore, could not apply to this Board.
>
> "2. Parole matters, bore 1937, were handled by the Penal Board, and all stationery and other printed matter was ordered from the Prison Printing Industry. After the creation of the Board of Probation and Parole this printed matter was ordered from the Prison Industry as before.
>
> "3. From 1937 until the present time the State Purchasing Department and State

Auditor approved all printing bills submitted by the Prison Industrial Office to the Board of Probation and Parole.

"4. All printed material used by the Board of Probation and Parole is in the interests of Prison Inmates or released prisoners from the Penitentiary or the Circuit Courts, and therefore, this printing should rightfully be done by the Prison Printing Industry.

"5. Inasmuch as this printing is done by inmates who should be supplied with work as part of an effective treatment program for the rehabilitation of inmates, and as a means of saving State money, the Board feels that it should continue to order printed material through the Prison Printing Industry.

"The Board of Probation and Parole should appreciate an opinion from you relative to this situation."

In your letter you refer to Section 14992, Article I, Chapter 120, R. S. Mo. 1939, which section is herein set forth:

"Commissioners of printing shall examine the proof sheets of all work executed under the provisions of this chapter, and see that they are correctly printed, and that all such work is executed in a suitable manner and in accordance with the requirements of this chapter. Said commissioners shall keep an accurate account of all paper delivered to the public printer or printers, and see that it is used properly and without unnecessary waste. All work to be executed for the executive departments shall be ordered through the commissioners of public printing, and a requisition shall be obtained in advance signed by the head of the department ordering such work and said requisition shall be approved by the commissioners of public printing in the same

> manner as that provided in section 14995 of this law respecting the examination of accounts. Executive departments shall in this and other sections of this chapter be construed to mean both the heads of said departments and the subordinate branches thereof, the boards, commissions, bureaus and officers appointed by the heads of said departments except the boards of educational and eleemosynary institutions of the state. It shall be the duty of the commissioners to see that the full number of copies of each job is received from the printer and delivered to the proper department. No accounts shall be considered or approved by them or paid by the state auditor unless the work for which it is rendered is done in accordance with the requisition obtained in advance and approved as herein provided, and if when the final copies are delivered they be less than the number called for in the requisition, the commissioners shall pay only for the actual number of copies delivered, and no account for composition shall be rendered or approved until the requisition for the order is returned to the commissioners and thereafter no charge for composition shall be made on that order. The commissioners of public printing shall have the power to determine the number of copies and number of pages of subject material in each document printed under their supervision. They shall audit all accounts for printing and binding executed under the provisions of this chapter, and they shall keep a record of the cost of printing and binding, the amount of paper used, and the entire expense of each document or item, and a copy of each document shall be duly filed and preserved by them, with the cost indorsed upon it."

It will be noted that this section of the statutes requires all printing for the executive departments to be ordered through the commissioners of public printing, and further

defines executive departments, excluding only the eleemosynary and educational boards.

In the case of State ex rel. McKinley Publishing Company v. Hackman, 314 Mo. 33 (decided in 1926) suit was brought to compel payment of a printing bill incurred by the highway department, which printing had not been requested through the printing commission. The case was decided by the Supreme Court en banc, and in deciding, the court held against the publishing company. At l. c. 42 of the case, supra, the court considered and applied Section 9714, R. S. Missouri, 1919, and said:

> "The statute regulating public printing is limited in its purview to the executive departments. This term has been well defined elsewhere to include all acts which public officers are required to perform by legislative authority and which they are bound to obey (Altemus v. New York, 6 Duer (N. Y.) l. c. 455), and to include all persons upon whom are imposed duties in the administration of public affairs as contradistinguished from legislative and judicial functions. (People v. Salsbury, 134 Mich. l. c. 549.)
>
> "The triune character of our governments, state and national, being the same, this definition is as applicable here as elsewhere. Its correctness, no one familiar with their character will question. Despite this fact the Legislature, whether prompted by what it regarded as an improperly limited judicial definition of the term, as applied to the law (Sec. 10356, R. S. 1909) then in force in regard to the duties of the printing commissioner, or for other reasons, repealed the same and enacted what is now Section 9714 of the present statute."

"Although Section 10356 had provided generally that 'all work to be executed for the executive departments of this State shall be ordered through the Commissioners of Public Printing' the Legislature, in the enactment of the new section (now Section 9714) provided, among other things, that 'the executive departments shall in this and in other sections of this chapter' (now Chapter 89) 'be construed to mean both the heads of said departments and the subordinate branches thereof, the boards, commissioners, bureaus and officers appointed by the heads of said departments, except the boards of educational, and the eleemosynary institutions of the State.'

"The authority of the Legislature to thus more clearly define the application of the term is in harmony with its recognized meaning of which we will take judicial notice. Aside from this, the power of a Legislature to define the objects affected or sought to be affected by its own enactments is beyond controversy. (City of St. Louis v. Nash, 266 Mo. 1. c. 530; State ex rel. Bank v. Allison, 155 Mo. 1. c. 330.)

"The moving impulse in the enactment of what is now Section 9714, Revised Statutes 1919, we have indicated. Its intention was to include, so far as concerns the regulation of public printing, the executive division of the State Government as recognized by the Constitution, and all of its departments and the subordinate branches thereof, except the educational and eleemosynary institutions. This was what was meant by the general provision of Section 9714 before its amendment. The only effect of the definition in the amendment was to give legislative sanction in a definite and unmistakable manner to the meaning and application of the words as theretofore employed. With this statute before us, but for the interposition of

> subordinate objections, which we will consider later, the solution of the question at issue would be but one of classification."

The court further held in this case that the highway department was included within the term "executive departments."

In your letter you mentioned that the statutes that created the Board of Probation and Paroles were enacted subsequent to the statute relating to the public printing. The ruling is recognized that statutes subsequently enacted, when treating of the same subject as prior statutes, may by implication repeal the prior statutes or portions thereof. The provisions of the statutes relating to the Board of Probation and Paroles contains nothing which authorizes or purports to authorize the Board of Probation and Paroles to have its printing done in any manner other than that found to be prescribed in Article 1, Chapter 120, R. S. Mo. 1939.

Further, the law covering state printing was in force and effect at the time of the enactment of the statutes creating the Board of Probation and Paroles. The General Assembly had knowledge of the existance of the law, and had it been the intention of the General Assembly that the Board of Probation and Paroles should be exempted from the operation of the provisions of the printing laws, this board could have been exempted as were the Board of Education and the Eleemosynary Board.

Section 14992, Article 1, Chapter 120, R. S. Mo. 1939, referred to in your letter, is identical with Section 9714, R. S. Mo. 1919, construed and applied in the Hackman case, supra.

In your letter, you mentioned that the printing for the Board of Probation and Paroles has not been done in accordance with the statute. A previous failure to conform to the statutes would be no justification for continuing such course. Attention is directed to the brief but very pertinent quotation from the case of State ex inf. McKittrick v. Williams, 144 S. W. (2d) 98, l.c. 104, wherein the court said:

> "* * * * Usage cannot alter the law. United States v. McDaniel, 7 Pet. 1, 8 L. Ed. 587. It is self evident that a custom or usage repugnant to the express provision of a statute is void. * * * * * * *"

CONCLUSION

The Board of Probation and Paroles is included within the executive departments mentioned in Section 14992, R. S. Missouri 1939, and should follow the provisions of Article 1, Chapter 120, R. S. Missouri, 1939, in having its printing done.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

WOJ:S