

March 22, 1966



Mr. James E. Schaffner
Acting State Purchasing Agent
P. O. Box 539
Jefferson City, Missouri

Dear Mr. Schaffner:

We have your letter requesting an opinion on the following subject:

"(1) Can any state department or institution request, require, or demand that the specifications as prepared by the state purchasing agent and director of printing indicate that a union label must appear on the finished printed piece and must the state purchasing agent and printing director comply with such request?

"(2) Can any state department or institution request, require, or demand that the specifications as prepared by the state purchasing agent and printing director indicate by NAME the union label that must appear on the finished printed piece, and must the state purchasing agent and director of printing comply with such request?

A reading of the statutes relating to the purchase of state printing clearly demonstrates that it was the intent of the legislature to grant sole discretion for the preparation of state printing specifications to the state purchasing agent; thus, Section 34.170, RSMo 1959, requires that the purchasing agent shall purchase all public printing and binding and that all state officers shall order all printing and binding through the purchasing agent.

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Section 34.180 provides, in part, that:

" * * * The form, style, size and arrangement of type, the spacing of lines, the width of borders and margins, the kind of binding, the method and material of all public printing, when not otherwise prescribed by law, shall be determined by the state purchasing agent * * *".

Section 34.200 states in part, that:

"The state purchasing agent shall prepare specifications for all printing to be contracted for and shall invite all bids and let all contracts upon such specifications which shall be a part of each contract and shall not be changed or modified after the contract is awarded. * * *"

In the light of these statutory pronouncements, the conclusion is inescapable that the various agencies of the state may not demand or require that their printing be done in any particular manner or by any particular printer, but that they may only request these. The purchasing agent is then bound to exercise his discretion in determining how the work may best be done "having a proper regard for economy and workmanship and the purpose for which the work is needed," Section 34.180.

You have also inquired about the limits of your discretion in possibly limiting potential bidders on printing.

The question must be considered in the light of Section 34.210 which states that all public printing must be let by competitive bidding and the contract awarded to the lowest responsible bidder. This section goes on to state that:

" * * * The purchasing agent shall exercise diligence in soliciting bids from all printing firms in the state that might reasonably be expected to be interested in bidding on any particular item and shall at all times endeavor to maximize competition among potential bidders. * * * "

It appears from this provision of Section 34.210 that the purchasing agent should try to solicit bids from all printers who might be interested in bidding and see that the largest possible number of bidders compete for the printing.

On this subject former Attorney General Dalton in a letter dated March 15, 1956, to a former Purchasing Agent Edgar C. Nelson said:

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"Sections 34.200 and 34.210 RSMo 1949, provide that the State Purchasing Agent shall prepare specifications for State printing which shall be let to competitive bids in the manner specified in the latter section. After careful research we are unable to find any applicable statutes or court decisions of Missouri to the effect that State printing specifications shall include or omit the union label from State printing.

"Sections 34.200 and 34.210 prescribe the procedure that shall be followed in all such instances by the purchasing agent. The latter section provides the purchasing agent shall exercise due diligence in soliciting bids from printing firms reasonably believed or expected to be interested in bidding on any particular item and the purchasing agent 'shall at all times endeavor to maximize competition among potential bidders.'

"Section 34.210 does not set out the details or directions to be followed by the purchasing agent in carrying out the quoted portion of the section, and from the context of same it appears that a reasonable construction of the legislative intent is that the actual method employed in such instances would be within the discretion of the purchasing agent.

"It further appears that your inquiry involves a matter also falling within the discretion of the purchasing agent and one which is directly related to his efforts in attempting to maximize competition among bidders."

We believe this answers your inquiry.

Yours very truly,

NORMAN H. ANDERSON
Attorney General