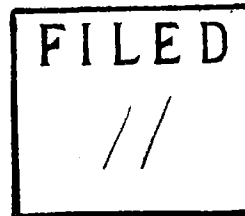


Printing, State: Printed matter to be bound only on order of Secretary of State under Section 13797 R.S. of Mo. 1933.

June 13, 1933



Hon. Dwight H. Brown,
Secretary of State
Jefferson City, Mo.

My dear Mr. Brown:

We herewith acknowledge receipt of your request of June 7th, portions of which read as follows:

"A question has arisen as to the right of the Commissioners of Public Printing to direct as to whether or not printing now in the process of manufacture, be or not be put through the bindery operations under the existing contract.

As you know, the above commissioners let a contract annually for paper and for stationery supplies and they let a contract for printing biannually. Bindery operations may or may not be covered by a contract. The printing contract expires June 30, 1934, and the contract for binding expires June 30, this year. These contracts are held by the Botz Printing Company.

The Commissioners of Public Printing have exercised an option they believe to be theirs and if in error in the matter, want to be corrected. We have taken the position that there is no question about the right of the Botz Printing Company to handle the printing of the state so long as the contract under which they operate, is held to be valid. We do take the position that a job of printing and binding, the delivery of which may be at a time after the expiration of the binding contract, will undoubtedly have to be printed in the Botz factory, but can be put through the bindery operations elsewhere.

We have given a requisition to the Botz Company to print the Session Acts of the last

General Assembly but have not given instructions for binding. To the contrary, we have instructed the company not to bind. The Bots Company takes the position that it will be possible for the Session Acts to be printed and bound during the life of the existing bindery contract and that in view of this fact, they have a right and that it is their duty to handle the binding."

Your inquiry resolves itself down to the question as to whether or not the Secretary of State or the Commissioners of Public Printing have any control over the printing and binding of the Session Acts after the copy is delivered to the printer. While the Legislature gives the Commissioners power to contract for the printing, it has also placed certain requirements upon the Secretary of State relative to the printing and binding of the Session Acts, and has laid down certain requirements which the printer and the binder must comply with or forfeit their bonds. These requirements will be found in Section 13787 Rev. Statute No. 1929, which reads as follows:

"Duty of secretary of state--printing and binding to be done within that time. The secretary of state shall furnish to the contractor for the printing specified in the second class, immediately after he shall have received from the governor the last enrolled bill after the adjournment of the general assembly at each session, a copy of all acts, memorials and joint resolutions passed at such sessions, and the contractor for the printing shall, within fifty days after such copy shall be furnished him as aforesaid, print all the copies that may by law be required, passed at such session, and deliver the same to the contractor for the folding, stitching and binding, on the order of the secretary of state, and the contractor for the folding, stitching and binding shall, within forty-five days after the receipt thereof, execute the folding, stitching and binding and deliver to the secretary of state the volumes bound, these provisions to be complied with under the penalty of forfeiture of the several bonds."

As to be noted this paragraph requires, first; that the secretary of state furnish the printer with the acts, memorials and joint resolutions passed at the session, second; that within fifty days after the last copy is ~~printed~~ *delivered* the printer

shall print the acts, memorials and joint resolutions duly passed, third; that on the order of the secretary of state the printer shall deliver to the binder the acts, memorials, and joint resolutions printed, fourth; that the binder shall bind the same and deliver the bound volumes to the secretary of state within forty five days of receipt of the printed matter. It is apparent that this statute reserves to the secretary of state the power to order the binding of the Session Acts. To hold otherwise would be to render nugatory the phrase "on the order of the secretary of state".

An examination of the Revised Statutes and Session Acts, shows that this section of the statutes is identical, in so far as the point at issue here is concerned, with the original act enacted 1870, laws of 1870, page 88. This act of 1870 abolished the office of public printer and provided for the letting of contract for the printing in the three classes and for the contract for binding, and provided that these contracts might be let to different contractors. Prior to this act of 1870, we find that the "state printer" did all the public printing and binding, and we find the section corresponding to Section 13797 R. S. No. 1828 to be section fifteen of chapter twenty of the Gen. Statutes of Mo., of 1865, this section reading as follows:

"The secretary of state shall furnish to the public printer, within fifteen days after the adjournment of the general assembly, at each session, a copy of all acts, memorials and joint resolutions passed at such session; and the public printer shall, within forty days after such copy shall be furnished to him as aforesaid, print all the copies that may, by law, be required, passed at such sessions; and the secretary shall, within ten days after the same are printed, make out and deliver to the public printer an index to the same, who shall, within thirty days, print the same, and deliver to the secretary of state such copies of the laws, bound in such manner as may be by law required."

No provision is made in this section for the delivery of the printed matter to the binder "on the order of the secretary of state" for the simple reason, that under this act the public printer and binder were one and the same, and the contracts were awarded by the vote of the legislature. When the act of 1870 was passed providing for the division of this printing and binding into different contracts, it was necessary and imperative that someone have control of this work on behalf of the commissioners of public printing. The secretary of state was the most

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logical person to control the printing and binding of the Session Act, and he was accordingly vested with this power. He was made intermediate agent between the printer and the binder, so that the state's business might be expeditiously carried to completion without undue interruption or misunderstanding.

While it is true that under the present situation we have the same contractor printing and binding the Session Acts the law remains the same, to wit, the secretary of state is vested with the right to order the binding done, and the mere fact, that the printer and the binder are one and the same is not sufficient to divest the secretary of state ~~of~~ this power and vest that power in the printer, to hold that the printer could proceed to bind the Session Acts under his binding contract, without authority of the secretary of state would be to divest the secretary of state of this power.

It is accordingly the opinion of this office that the binding of the Session Act can only lawfully be done upon an order of the secretary of state, which order if made before June 30, 1933, should direct Botz Printing Company to bind that Session Act, or if made after June 30, 1933, should direct Botz Printing Company to deliver the printed matter, to the binder designated by the Commissioner of Public Printing.

Respectfully submitted,

HARRY G. CALINER, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

HGW:lm