

CONTRACTS: Senate Bill No. 182 has no application to existing contracts and those heretofore let.

August 6, 1937.

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Honorable Charles A. Haskins,  
Chief Engineer and Architect,  
State Building Commission,  
Jefferson City, Missouri.

Dear Mr. Haskins:

This department is in receipt of your letter of August 6, 1937, requesting an opinion as to the following:

"In reply to your opinion of July 17, 1937, may I submit one question relating to the application of Senate Bill No. 182?"

"In your opinion, does Senate Bill No. 182 have any application to contracts already in existence and to contracts heretofore let?"

Section 15 of Article II of the Constitution of the State of Missouri provides:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, of making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

August 6, 1937.

When a State descends from its plane of sovereign and contracts with private individuals, it is regarded pro hac vice as a private person itself and is bound accordingly. Hall v. Wisconsin, 103 U. S. 5. This is a well settled principle of law and is clearly stated by Judge Black in the case of State ex rel. Walker v. Walker, 88 Mo. 279, wherein he says:

"Contracts made between the state and an individual are as binding upon the state as if the state was an individual. It cannot impair the obligation of its own contract. As was said in State v. Hawthorne, 9 Mo. 390, the legislature can no more violate a contract made by themselves or under their authority than they can rescind or alter or impair the obligation of one made between private individuals. This principle of law is well established."

Senate Bill No. 182 was signed by the Governor on the 24th day of June, 1937, and will become a law on the 6th day of September, 1937.

When Senate Bill No. 182 finally becomes a law, if it be sought to apply its provisions to contracts already in existence and those heretofore let, not only would such a construction render the statute unconstitutional for the reason that it impairs the validity of written contracts, but such a construction would render it unconstitutional for the reason that it would give to the statute a retrospective application. This cannot be done.

In the case of Bartlett v. Ball, 142 Mo. 28, the Supreme Court of Missouri said:

"Nor is it to be forgotten that retrospective laws are forbidden eo nomine by our constitution."

And in the case of Graham Paper Company v. Gehner, 59 S. W. (2d) 49, the Court said:

"Defendants are clearly correct. A new or an amendment of an existing

statute which reaches back and creates a new or different obligation, duty, or burden which did not exist before the new law itself became effective, or which makes the obligation or burden begin at a date earlier than the date of going into effect of the law itself, is retroactive in its operation and unconstitutional. A law is retroactive in its operation when it looks or acts backward from its effective date, and if it has the same effect as to past transactions or considerations as to future ones, then it is retrospective. *Leete v. State Bank*, 115 Mo. 184, 198, 21 S. W. 788."

CONCLUSION

In view of the foregoing, we are of the opinion that Senate Bill No. 182 has no application whatsoever to contracts entered into prior to the date Senate Bill No. 182 will become the law of the State of Missouri.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
(Acting) Attorney General.

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