



State of West Virginia
Office of the Attorney General

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The Honorable William P. Cole III
President of the Senate
Building 1, Room 229M
1900 Kanawha Boulevard, East
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The Honorable Tim Armstead
Speaker of the House of Delegates
Building 1, Room 228M
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Mr. President and Mr. Speaker:

You have asked for an Opinion of the Attorney General regarding whether Article 6, Section 34 of the West Virginia Constitution prohibits the Legislature from printing daily journals and bills in-house. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General shall “render to the president of the Senate and/or the speaker of the House of Delegates a written opinion or advice upon any questions submitted . . . by them . . . whenever he or she is requested in writing so to do.” To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Attorney General’s Office.

According to your letter, it is the position of the West Virginia Legislature that Section 34 would not prohibit the Legislature from leasing machines for Legislative Services employees to print bills and daily copies of the journal in house. You explain that the Legislature would like to use its own employees to print bills and daily copies of the journal without the use of any outside vendor or contractor, but that other materials, including stationery, would still be printed by outside companies under contracts awarded pursuant to Section 34. The letter states that the Legislature has concluded that Section 34 applies only “to instances in which an outside vendor is used.” Furthermore, you anticipate “this method of printing would result in substantial savings to the State of West Virginia.”

Your letter raises the following legal question:

Do the bidding requirements of Article 6, Section 34 of the West Virginia Constitution effectively prohibit in-house printing by the Legislature?

We begin with the text of Section 34, which is ambiguous as to whether it requires all of the Legislature’s printing needs to be bid out to and performed by an outside vendor. In pertinent part, the language provides:

The Legislature shall provide by law that the fuel, stationery and printing paper, furnished for the use of the state; the copying, printing, binding and distributing the laws and journals; and all other printing ordered by the Legislature, shall be let by contract to the lowest responsible bidder, bidding under a maximum price to be fixed by the Legislature

Parsed out, Section 34 imposes a bidding procedure for contracts on three categories of items: (1) “the fuel, stationery and printing paper, furnished for the use of the state”; (2) “the copying, printing, binding and distributing [of] the laws and journals”; and (3) “all other printing ordered by the Legislature.” The ambiguity arises out of categories two and three (the residual clause). On one hand, the reference in the residual clause to “other printing *ordered by* the Legislature” seems to indicate some intent to exclude from the bidding procedure printing that is *not* ordered from another entity, *i.e.*, in-house printing. *Id.* (emphasis added). On the other hand, category two seems definitively to require that all of “*the . . . printing*” of “the laws and journals”—a subset of the Legislature’s printing needs—be bid out to an outside vendor. *Id.* (emphasis added). What is unclear is whether the use of the phrase “ordered by” in the residual clause reflects a limitation implicit in the other categories. We have located no cases of the West Virginia Supreme Court of Appeals or previous Attorney General Opinions that have addressed this question.

Recognizing the ambiguity, we believe for several reasons that the better reading is that Section 34 does not require all of the Legislature’s printing to be bid out to outside vendors. *First*, consistent with long-standing principles of textual interpretation, we read the residual clause to be a reflection of the preceding categories. As the Supreme Court of Appeals has explained, “[i]t is a fundamental rule of construction that, in accordance with the maxim *noscitur a sociis*, the meaning of a word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated.” *Barr v. NCB Mgmt. Servs., Inc.*, 227 W. Va. 507, 512, 711 S.E.2d 577, 582 (2011) (internal quotation marks omitted). Thus, although “ordered by” does not technically modify “the . . . printing . . . the laws and journals” as a grammatical matter, that limitation in the residual clause strongly suggests that the previous categories in the list are likewise limited. As such, we read Section 34 to impose bidding requirements on the Legislature’s printing needs only if that printing is *ordered by* the Legislature from another entity. It does not effectively prohibit in-house printing. *Second*, the inclusion of “printing paper” in category one further suggests that in-house printing by the Legislature is contemplated. There would be little need for “printing paper[] furnished for the use of the state” if the Legislature or other state entities were not permitted to print on their own.

This reading of Section 34 is bolstered by court decisions in several other States, in which state entities have been permitted not to bid out printing needs, even though the state constitutions seemed clearly to require the use of outside vendors. At least seven States currently have similar constitutional provisions with language that, unlike Section 34 in West Virginia, unambiguously impose contracting requirements on *all* printing. Yet the highest courts in three of those States have declined to construe their constitutional provisions to require state entities to

bid out all printing needs.¹ For example, Kentucky's constitution states: "The printing and binding of the laws, journals, department reports, and *all* other public printing and binding, shall be performed under contract, to be given to the lowest responsible bidder . . ." Ky. Const. § 247 (emphasis added). In contrast to Section 34, nothing in the Kentucky provision suggests that in-house printing (not "ordered by" the legislature from another entity) is exempt or permissible. Nevertheless, the Court of Appeals of Kentucky upheld a statute that authorized a state department to offer duplication and minor printing services to other agencies because "[t]he article was not designed to put the State in a straitjacket so that it could not print or make manifold copies of its records and documents by machines in its own offices." *State Journal Co., Inc. v. Commonwealth*, 160 S.W.2d 145, 148 (Ky. 1942) (internal quotation marks omitted). The constitutional provisions in Texas and Alabama have been construed similarly.²

Arkansas's treatment of the same issue also supports our reading of Section 34. The Arkansas constitution had initially imposed contract requirements on "all . . . printing." *Erxleben v. Horton Printing Co.*, 675 S.W.2d 638, 639 (Ark. 1984) (quoting Ark. Const. art. 19, § 15). Interpreting this blanket language, the state's high court struck as unconstitutional a statute that, in the court's view, "permit[ted] the State to go into the printing business." *Gray v. Gaddy*, 510 S.W.2d 269, 271 (Ark. 1974). The constitution was then amended to read: "The printing . . . purchased by the General Assembly . . . shall be under contracts given to the lowest responsible bidder . . ." Ark. Const. amend. 54, § 1 (emphasis added). In turn, the court interpreted the new phrase "purchased by" to "require[] competitive bidding for printing purchased from

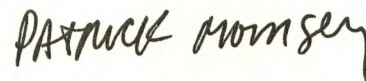
¹ The remaining four States have not yet addressed whether their constitutional provisions preclude in-house printing by state entities. See Colo. Const. art. 5, § 29 (emphasis added) ("All stationery, printing, paper, and fuel used in the legislative and other departments of government shall be furnished; and the printing and binding and distributing of the laws, journals, department reports, and other printing and binding . . . shall be performed under contract, to be given to the lower responsible bidder . . ."); Miss. Const. art. 4, § 107 (emphasis added) ("All stationery, printing, paper, and fuel, used by the Legislature, and other departments of the government, shall be furnished, and the printing and binding of the laws, journals, department reports, and other printing and binding . . . shall be performed under contract, to be given to the lowest responsible bidder . . ."); Wis. Const. art. 4, § 25 (emphasis added) ("The legislature shall provide by law that . . . all printing authorized and required by them to be done for their use, or for the state, shall be let by contract to the lowest bidder . . ."); Wyo. Const. art. 3, § 31 (emphasis added) ("All stationery, printing, paper, fuel and lights used in the legislature . . . shall be furnished, and the printing and binding of the laws, journals and department reports and other printing and binding . . . shall be performed under contract, to be given to the lowest responsible bidder . . .").

² For Texas, see Tex. Const. art. 16, § 21 (emphasis added) ("All stationery, printing, fuel used in the legislature and departments of the government other than the judicial department, printing and binding of the laws, journals, and department reports, and all other printing and binding . . . shall be performed under contract, to be given to the lowest responsible bidder . . ."); *Dir. of the Dep't of Agric. & Env't v. Printing Indus. Ass'n of Tex.*, 600 S.W.2d 264, 270 (Tex. 1980) (concluding that the constitutional provision was intended only to apply to "private printers for those printing needs which were beyond the State's own capabilities or when private printing was deemed desirable"). For Alabama, see Ala. Const. art. 4, § 69 (emphases added) ("All stationery, printing, paper, and fuel used in the legislative and other departments of government shall be furnished and the printing, binding, and distribution of laws, journals, department reports, and all other printing, binding . . . shall be performed under contract, to be given to the lower responsible bidder . . ."); *Associated Indus. of Ala., Inc. v. Britton*, 371 So. 2d 904, 908 (Ala. 1979) (holding that its constitutional provision did "not preclude a state agency from performing printing services for another state agency" since the provision did "not purport to circumscribe the police power of the state").

commercial printers, but [to] permit[] the state to produce its own duplicating and printing without submitting a bid.” *Erleben*, 675 S.W.2d at 640. Our approach in this Opinion to the phrase “ordered by the Legislature” in Section 34 tracks the meaning given in Arkansas to the similar phrase “purchased by the General Assembly.”

In sum, while we recognize the ambiguity in Section 34, we conclude that the provision should not be read to prohibit in-house printing by the Legislature. You have not asked, and we have not addressed, whether there are limitations on or procedural requirements applicable to the Legislature’s leasing of the printing machinery necessary to conduct printing in-house. Nothing in Section 34 appears on its face to apply, but we do not opine on the applicability of any other constitutional or statutory provision.

Sincerely,



Patrick Morrissey
Attorney General

Elbert Lin
Solicitor General