



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

MARIO J. PALUMBO  
ATTORNEY GENERAL

RICHARD L. GOTTLIEB  
CHIEF DEPUTY ATTORNEY GENERAL

(304) 348-2021  
FAX 348-0140

January 15, 1993

The Honorable Darrell E. Holmes  
Clerk, The Senate of West Virginia  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Holmes:

By letter dated December 22, 1992, you requested an Opinion of the Attorney General regarding the following:

In July 1992, the Purchasing Division of the State of West Virginia awarded a contract to Jarrett Printing Company of Charleston to print the 1992 West Virginia Blue Book for the Senate of West Virginia.

Following the award, Jarrett Printing Company began performance of work under the contract and, over a three-month period, completed the initial typesetting, layout design and pagination of the first three sections of the Blue Book. In addition, the firm had started preliminary work on five of the remaining nine sections of the Blue Book.

In a case involving the award of a contract for printing for the West Virginia House of Delegates, the Supreme Court of Appeals of West Virginia on December 9, 1992, delivered Opinion of the Court No. 21477 which stated that the award of any legislative contract to Jarrett Printing Company violated the plain meaning of Article 6, Section 34 of the West Virginia Constitution.

Since the court decision appears to nullify the aforementioned contract with Jarrett Printing Company involving the West Virginia Blue Book, and in anticipation that the Governor will take action to disapprove further work by Jarrett Printing under such contract and relet the same to another printer, is the Senate obligated to compensate Jarrett Printing for work performed prior to the court action?

The Hon. Darrell E. Holmes  
January 15, 1993  
Page 2

By another letter received on January 7, 1993, you amended your previous request as follows:

It appears to me now that I should not have assumed, for purposes of my December 22, 1992, inquiry, that the Blue Book contract was necessarily nullified by the Supreme Court's December 9, 1992, decision. Therefore, in an effort to be technically accurate, would you please supplement my earlier letter by adding the following question:

Given the December 9, 1992, ruling by the West Virginia Supreme Court of Appeals in Opinion No. 21477, is the contract entered into by the West Virginia Senate and Jarrett Printing Company for the production of the 1992 Blue Book legally valid?

The opinion to which you refer was rendered by the West Virginia Supreme Court of Appeals in Jarrett Printing Company v. Ronald Riley, etc., et al., No. 21477 (W. Va. December 9, 1992). It was a mandamus action, in which Jarrett Printing Company sought to compel the award of a Senate printing contract to them as the lowest responsible bidder. However, because State Senator Martha Walker is married to the owner of Jarrett Printing, the Supreme Court denied the writ of mandamus. The Court held that the award of a legislative printing contract to the spouse of a legislator would violate the plain meaning of West Virginia Constitution Article VI, Section 34, which provides in relevant part:

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; and no member or officer thereof, or officer of the State, shall be interested, directly or indirectly, in such contract  
. . . . [Emphasis added.]

In the Jarrett Printing Company decision the Supreme Court did not need to address the issue raised by your January 7, 1993, letter regarding the legal validity of a contract awarded in violation of the above constitutional provision. However, the Court noted in that opinion that Mrs. Walker was a member of the West Virginia House of Delegates until December 1, 1992. Jarrett Printing Company v. Riley, No. 21477, slip op. at 1 (W. Va. December 9, 1992).

Under the Court's holding in Jarrett Printing Company, it is clear that the award of the Senate Blue Book printing contract to Jarrett Printing Company in July 1992, while Mrs. Walker was married to the owner of the company and also a member of the Legislature, was contrary to the provisions of W. Va. Const. art. VI, § 34. For that reason, we must conclude that the Senate Blue Book printing contract with Jarrett Printing Company is void by operation of law and therefore unenforceable. This conclusion is supported by previous decisions of the West Virginia Supreme Court of Appeals.

Generally speaking, "all contracts or agreements which have for their effect anything which is repugnant to justice, or against the general policy of the common law, or contrary to the provisions of any statute, are void." Capehart v. Rankin, 3 W. Va. 571, 572 (1869). This rule is not without its exceptions. However, where a public officer is personally interested in a contract, in violation of a statute or a constitutional provision prohibiting such an interest, the contract is void and not enforceable. See Poling v. Board of Education of Philippi Independent Dist., 56 W. Va. 251, 49 S.E. 148 (1904).

In the Poling case, the West Virginia Supreme Court of Appeals refused payment to a member of a board of education who had sold materials to a county board of education in violation of a statute prohibiting such sales. The statute in question was enacted pursuant to W. Va. Const. art. XII, § 9, which provides in part:

No person connected with the free school system of the State, or with any educational institution of any name or grade under state control, shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law . . . . [Emphasis added.]

The Court noted that this Constitutional provision itself would make the contract void, and although the statute provided a fine of up to \$10 for a violation, that penalty alone was insufficient to accomplish the legislature's objectives: "A contract in violation of a statute made to protect the general public . . . and to promote the public good, is void, and will not be enforced in the courts." Syl. pt. 2, in part, Poling v. Board of Education, 56 W. Va. 251, 49 S.E. 148 (1904). The operative provisions of the above constitutional provision and W. Va. Const. art. VI, § 34 are very similar, and we think that their purposes are the same.

The Hon. Darrell E. Holmes  
January 15, 1993  
Page 4

In the Jarrett Printing Company case, the Governor had requested an Opinion of the Attorney General regarding the legality of awarding the legislative printing contract for the House of Delegates to Jarrett Printing. In our November 10, 1992, opinion, we said that W. Va. Const. art. VI, § 34, prohibits awarding a legislative printing contract to a company owned by the spouse of either a sitting legislator or legislator-elect. In that Opinion, we also discussed the decision of the West Virginia Supreme Court of Appeals in Cimino v. The Board of Education of the County of Marion, 158 W. Va. 267, 210 S.E.2d 485 (1974). In the Cimino case, the Supreme Court upheld the termination of a former school cook's employment with the Marion County Board of Education because her husband was elected to the school board. The Court held that the cook's employment contract with the county board of education became void as of the date of her husband's election to the board because the contract was then in violation of W. Va. Code § 61-10-15 and was, therefore, contrary to public policy.

As we acknowledged in our November 10, 1992, opinion, neither W. Va. Code § 61-10-15, nor W. Va. Const. art. VI, § 34, expressly states that contracts in violation of their provisions are void. However, we noted that "[a]s a general rule, an agreement which violates a provision of . . . a state constitution, or of a constitutional statute, or which cannot be performed without violating such a provision, is illegal and void." 17A Am. Jur. 2d Contracts § 247 (1991). We concluded that as a consequence of this rule, any legislative printing contract awarded to Jarrett Printing Company while Mrs. Walker is a legislator or legislator-elect would be void by operation of law. The Court in Cimino, supra, also relied upon this and other well-established common-law doctrines in holding that a contract, valid and binding in its inception, may be rendered void by subsequent circumstances which bring the contract within the prohibitions of an existing statute.

Which brings us to your final question: If the contract in question is void, is the Senate nonetheless obligated to compensate Jarrett Printing Company for its work performed prior to the Supreme Court's decision? In our opinion, you are not authorized to do so. Rather, as hereafter explained, only the Legislature can authorize payment.

The general rule regarding illegal contracts in West Virginia is as follows:

An illegal contract is, as a rule, void--not merely voidable--and can be the basis of no judicial proceeding. No action can be maintained upon it, either at law or in equity. This impossibility of enforcement exists whether

the grant is illegal in its inception, or whether, being valid when made, the illegality has been created by subsequent statute.

4B Michie's Jurisprudence Contracts § 109 (1986). This rule is consistent with general common-law principles found in most other jurisdictions:

A void contract is no contract at all; it binds no one and is a mere nullity. Accordingly, an action cannot be maintained for damages for its breach. No disaffirmance is required to avoid it, and it cannot be validated by ratification; life cannot be breathed into it on the ground of expediency or because its completion would render a useful purpose in accomplishing desired ends.

17A Am. Jur. 2d Contracts § 7 (1991).

In the case of Shonk Land Co. v. Joachim, 96 W. Va. 708, 123 S.E. 444 (1924), the West Virginia Supreme Court of Appeals held that a county board of education could not enter into contracts in excess of available funds, nor authorize payments to for services rendered and goods provided in a prior fiscal year under such contracts, where to do so would be contrary to statute. The Court held that under the statute such contracts and any payment orders issued thereunder were void, and could not be enforced. Moreover, a public officer cannot validate a void contract by later approving payment for services rendered: "A contract *malum prohibitum* cannot be subsequently ratified, and there is no implied promise to pay for benefits received thereunder." Syl. pt. 4, Id.

In State ex rel. Point Towing Co. v. McDonough, 150 W. Va. 724, 149 S.E.2d 302 (1966), the West Virginia Supreme Court of Appeals refused to order payment under a contract purporting to bind the State Department of Natural Resources to purchase a towboat during the next fiscal year. The Court held that because the contract was invalid under W. Va. Code § 12-3-17, it would be unlawful for a State officer to sign a requisition for payment thereunder, even though the boat had already been delivered. 150 W. Va at 7\_\_, 149 S.E.2d at 307.

The Jarrett Printing Company contract being invalid, in our opinion there is no basis for payment by the Senate of any claim for services rendered thereunder. This does not mean, however, that Jarrett Printing Company is without any relief. In Shonk Land Co. v. Joachim, discussed above, the Supreme Court noted that the proposition of a new agreement, or recovery on quantum meruit for goods received or labor expended, was not considered by the lower

court and was therefore not at issue on appeal: "This litigation is to declare these contracts so made and as they now exist illegal and void, and to prevent their consummation. It may be conceded that appellee should be paid for the value of services performed, and goods delivered and used; but it cannot be done in this proceeding." 96 W. Va. at 7\_\_, 123 S.E. at 449.

Under the Shonk Land Co. decision, it appears that Jarrett Printing may have a claim for compensation under equitable theories such as quantum meruit for services rendered. However, the general rule is that a State agency may not entertain such a claim:

Ordinarily, a state can incur liability only by means of a contractual obligation. Any moral obligation of state which may be judicially recognized and satisfied by payment of public funds must be imposed or voluntarily assumed by a valid act of legislature which finds and declares the existence of such an obligation.

17 Michie's Jurisprudence State § 13 (1979). For the general rule by which a moral obligation of the State may be recognized, and for the payment of which a valid appropriation may be made, see State ex rel. Cashman v. Sims, 130 W. Va. 430, 43 S.E.2d 805 (1947).

In State ex rel. C. & D. Equipment Company v. Gainer, 154 W. Va. 83, 174 S.E.2d 729 (1970), the State Building Commission of West Virginia issued a requisition for payment of a compromised claim for damages incurred by contractor in connection with a contract with the Commission. The State auditor refused payment of the claim, and the Supreme Court of Appeals refused to order such payment, holding in Syllabus Points 2 and 3:

2. State agencies being immune from suit are not authorized to entertain claims for unliquidated damages or to enter into any binding compromise of a claim.

3. Only the legislature can authorize such payments if and when they are found and declared by it to be moral obligations of the state, and specific appropriations made for payment thereof.

Under the foregoing decision, any request by Jarrett Printing Company for compensation in this instance would constitute an unliquidated claim for damages which are not covered or authorized by any statute or valid contract, and which the Senate has no authority to compromise or request payment therefor. It does not matter whether or not Jarrett Printing Company has what may be a just claim:

Although the claim in question may be a just claim and should be paid, there is no authority for the auditor to issue a warrant for such claim without the authorization for payment by the legislature. The proper procedure, therefore, to have the claim considered for payment is for the petitioner to file a petition with the Court of Claims . . . .

State ex rel. C. & D. Equipment Company v. Gainer, 154 W. Va. at \_\_\_, 174 S.E.2d at 734; cf. State ex rel. C. J. Langenfelder & Son, Inc. v. Ritchie, \_\_\_ W. Va. \_\_\_, 179 S.E.2d 591 (1971) (holding that a statute required the payment of claims for additional work where such were authorized under unit price contracts with the State Department of Highways). The West Virginia Court of Claims procedures are set forth in W. Va. Code § 14-2-1 et seq.

We are therefore of the opinion that in order for Jarrett Printing Company to be compensated for work performed on the West Virginia Blue Book, the legislature would have to find the claim to be a moral obligation of the State, and make a specific appropriation for payment thereof.

**SUMMARY**

Under the opinion of the West Virginia Supreme Court of Appeals in Jarrett Printing Company v. Riley, No. 21477 (W. Va. December 9, 1992), the contract entered into by the West Virginia Senate and Jarrett Printing Company for the production of the 1992 West Virginia Blue Book violated the provisions of W. Va. Const. art. VI, § 34, and is therefore void. Accordingly, the Senate is not authorized to compensate Jarrett Printing Company for work performed prior to the Court's decision. Any claim by Jarrett Printing Company for compensation must be submitted to the West Virginia Court of Claims or directly to the Legislature.

Very truly yours,

MARIO J. PALUMBO  
ATTORNEY GENERAL

By   
DAWN E. WARFIELD  
DEPUTY ATTORNEY GENERAL