

territory sought to be annexed shall not be deemed a part of the annexing city. \* \* \*

Under the foregoing statute, pending such appeal, the territory sought to be annexed to such city is not deemed to be a part of the annexing city. Therefore, the property owners within such territory would not be entitled to fire protection from the city, or to vote in any city election held in such city, pending such appeal.

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OFFICIAL OPINION NO. 6

March 20, 1947.

Hon. C. C. Clifton,  
 Director of State Printing,  
 State House Annex,  
 Indianapolis, Indiana.

Dear Mr. Clifton:

I have before me your request for an official opinion upon the following question:

"The members of the Board of Public Printing have requested that we ask you for an official opinion as to whether they have the authority under their contract with the Wm. B. Burford Printing Company to grant increases as requested by that Company on the items listed on the enclosed sheets.

"The Company justifies its request for these increases under Sections 35 to 40 inclusive in the General Requirements of the enclosed price list and contract."

In an official opinion issued by this office on June 25, 1946 (No. 63) the matter of the validity of provisions in public contracts providing for an increase or decrease in the price of the work to be performed, commonly called "escalator clauses", was discussed at length. It was held in this opinion that escalator clauses in public contracts may be valid under certain conditions.

The Board of Public Printing has entered into a contract with the Wm. B. Burford Printing Company for the period from July 1, 1946 to June 30, 1948 whereby the company agrees to furnish to the Board certain paper stock and other printing supplies at certain specified prices. This contract was awarded pursuant to advertisements for bids. Included as a part of such contract are the General Requirements which provide the specifications, etc., of the materials to be furnished. (Page 4 of printed contract). Also, within such General Requirements are several provisions providing for price increases or decreases in *paper stock* during the period of the contract.

No. 35 of the General Requirements of such contract provides that all prices of *paper stock* bid on shall be firm for each 30 days of the contract and shall be revised either up or down for the following 30 days, depending on the advance or decline in the paper market. No. 36 provides that in order for the contractor to be entitled to a revision in contract prices to compensate him for a rise in the market price of paper he shall submit proof to the Board before the beginning of each 30-day period that there has been a change in paper prices, up or down, and, if such notice is not given, then the price may not be changed.

No. 37 requires the revision of paper prices to be made on a percentage basis of the jobber's printed list price. The original contract price may only be increased or decreased that percentage which the jobber's printed list price increased or decreased. No. 38 provides that if the Board authorizes the contractor to make a paper commitment for a period longer than 30 days at a specific rate, then the paper price or prices shall stay stable until the paper covered by the commitment is used up.

No. 39 of the General Requirements provides that when there is a change in either taxes or labor cost aggregating a five per cent increase or decrease in a contractor's costs, exclusive of the cost of paper, upon submission of proof of the same to the satisfaction of the Board, then the actual increase or decrease in the cost of printing, exclusive of the cost of paper, shall be computed on a percentage basis of the contract prices in a manner acceptable to the Board and shall be added to or deducted from the contract prices.

No. 40 requires bidders to submit the prevailing labor rates of all departments, and other matters, to the Board.

The foregoing sections of the contract between the Board and the Wm. B. Burford Company are, in my opinion, valid, and if the requirements in said sections are strictly followed, I believe that price increases or decreases could be made under such contract upon the terms and conditions of said sections.

However, these provisions numbered 35 to 40, inclusive, apply only to *paper stock* and do not apply to any other materials or supplies furnished under the contract. An examination of the schedules furnished with your letter shows that the items listed upon which an increase in price is asked covers not only paper, but also pencils, erasers, ink-wells, paper fasteners, bank pins and thumb tacks. If one or more of these items do not fall within the definition of the term "paper stock", as used in Sections 35 to 40, inclusive, above discussed, then they should not be included as eligible for a price increase or decrease.

Furthermore, it is not clear from the schedules furnished that the formula for figuring the increased price, set forth in No. 37 of the General Requirements of the contract, heretofore discussed, has been followed. In order to have a valid increase or decrease in the prices of paper stock, the formula set forth in said requirement No. 37 must be followed together with the other requirements, conditions and terms of the General Requirements numbered 35 to 40, inclusive.

Based upon the foregoing authorities and the provisions of the printed contract between the Board of Public Printing and the Wm. B. Burford Company, it is my opinion that there may be a valid increase or decrease in those items which constitute paper stock, providing the company complies strictly with the provisions, conditions and terms of General Requirements numbered 35 to 40 of such contract.