"Appellee is bound by his acceptance of an amount less than the face of his claim, in consideration that he got it before it was due. * * *"

Princeton Coal Co. v. Dorth, 191 Ind. 615.

The court, in this case, further considered the question as to whether the procedure might be unlawful as an assignment of wages, deciding, however, that it was not an assignment of wages and consequently, not in violation of the statutes on that subject.

Upon the authority of the above case, your first question is answered in the negative.

Your first question, being answered in the negative, your second question requires no answer. I am of the opinion that, in order to correct any abuse which may arise from the above procedure described in your letter, additional legislation is necessary.

INDIANA BOARD OF PUBLIC PRINTING: Construction of Printing Contract—Meaning of the language "equal to" as provided in the specifications.

May 27, 1942.

Mr. C. C. Clifton, Director,
Indiana Board of Public Printing,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Clifton:

I have before me your request that an official opinion issue in response to certain questions relating to Class Three, Subdivisions A, B and C for the furnishing of supplies under specifications of the State Printing Contract for the period of May 1, 1942, to April 30, 1943. The specific questions and the response thereto follows:

I

1. Where specific brand names are mentioned or "equal to," the intent of this Department was to have the successful contractor furnish any one of the
brands mentioned if so requested by any State Department; or, if another brand were requested or furnished, it should be of a grade equal to those named in the specifications.

"The contractor now desires to furnish only one brand instead of the various brands mentioned, on the supposition that it is equal to the brands mentioned and therefore he should not be required to furnish any of the other specified brands."

You state that a typical example of the situation comprehended by your inquiry is item 264 of Class Three, Subdivision A appearing on page 75 of the printed specifications which is:

"264. Typewriter Carbon paper, letter size, 8 1/2 x 11, equal to Old Dutch, Remington Rand, Carter's, KeeLox, any weight, per box of 100 sheets."

In the "General Requirements" at page 11 of the printed specifications we find the following provision:

"No. 5. The descriptions herein of particular brands of goods in these specifications are in no case to be interpreted as preventing the submission of bids or acceptance of goods of equal quality of other makes and brands.

Where the contract is to deliver goods "equal to" a specified brand, the seller is bound to deliver goods of that brand if none other will equal them, but if the standard goods, or any other variety, are in fact equal to the designated brand, the seller may deliver them.


Consequently, if the brand offered is in fact "equal to" the brands mentioned in the specifications in every particular then such unmentioned brand may be offered. However, the Director of Public Printing must in each instance where an unmentioned brand is offered, make a determination of the fact as to whether the unmentioned brand is actually equal in all
respects to the specified article comprehended by the contract. If one of the brands mentioned in the specifications is offered this determination need not be made. The Director of Public Printing should be most vigilant when a brand not mentioned in the specifications is offered, and should in no instance accept such a product until the most exacting tests and actual experience establishes that it is, in all material respects, actually "equal to" the brands specified. When a number of brands are set forth in the specifications as in this instance, it may be presumed that all of a given quality have been expressly specified, with the result that the burden of establishing the fact that the unmentioned brand is "equal to" the other brands must be borne by the contractor attempting to substitute the unmentioned brand for those named in the specifications.

II

Your second inquiry reads:

"2. There are also a number of other items where specific brand names are not used but certain standards of quality, which cover a number of different trade names in the same price class, are set out. The intent of this Department in these instances, such as mimeograph papers, imprinted-back carbon papers, etc., was to permit the various State Departments to order any brand falling in this price range, which brand, after trial, had proved to be the most satisfactory for its specific use.

"In these instances, the contractor seeks to place an interpretation whereby he may furnish any brand he desires regardless of the wishes of the ordering Department, on the theory that any one brand in that same price range is equal to another."

An indication of the factual situation comprehended by this inquiry can be discovered by reference to items 283, 284, 285 and 286 of Class Three A, as set forth on page 76 of the printed specifications:

"283. Cards, 3x5, 110 lb. Index, per 100.
284. Cards, 4x6, 110 lb. Index, per 100."
I am of the opinion that the purchaser can not insist upon the delivery of any specific brand under the specifications similar to that set forth above. If the certain standards of quality set forth in the specifications are met, the goods should be accepted.

DEPARTMENT OF PUBLIC INSTRUCTION: Tenure Teacher —Method of acquiring status of tenure teacher.

May 28, 1942.

Hon. Clement T. Malin,
State Superintendent, Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Malan:

I have before me your letter stating in part as follows:

"A superintendent of schools served three consecutive years in a school city. At the end of the three years he was granted a four-year contract. This made seven years of service. Is he a tenure teacher?"

The answer to the question submitted is in the negative. This case is governed by my opinion issued to you under date of May 12, 1942, to which you are referred for a further discussion.