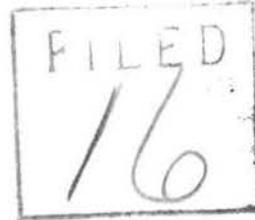


DEPARTMENT OF PENAL INSTITUTIONS: Contract between Metropolitan Mfg. Co. and Dep't. of Penal Institutions is legal.

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June 27, 1936.



Mr. R.L. Chapman,  
Sup't. of Industries,  
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of June 16 wherein you attach a contract made by and between the Department of Penal Institutions and the Metropolitan Manufacturing Company, a corporation; also, a surety bond issued by the Standard Accident Insurance Company, guaranteeing the faithful performance of a contract to the amount of \$5,000 on the part of the Metropolitan Manufacturing Company, desiring to know whether or not the contract between the Department of Penal Institutions and the Metropolitan Manufacturing Company is valid and legal.

We have examined the contract and believe that it meets the requirements necessary for the legal contract in that (1) the parties appear to have the capacity to contract; (2) the consideration is stated definitely and is a legal consideration; (3) the contract was made for a legal object; and (4) it is properly executed.

You next desire to know whether or not the officers of the corporation have legally bound the corporation, and whether or not it is necessary to have Mr. Kessler and Mr. Peszke, the new President and Vice-president, respectively, sign it. We do not have before us a copy of the by-laws or charter of the corporation, but as usual, the President and the General Manager or other officer can bind the corporation.

In the case of *Rosenbaum v. Gillian*, 101 Mo. App. 126, it was said:

"Where an officer, placed in control of the affairs of a corporation, and permitted to manage its business, deals with a party with respect to the affairs of the corporation has no

no knowledge of the want of the officer's authority, such party may hold the corporation, although the latter exceeds its authority."

And in the case of Coleman v. Insurance Company, 273 Mo. 620, the Court said:

"A document attested by the corporate seal and ostensibly signed by the president and attested by the secretary, which purports to be the act of the corporation \* \* \* is not conclusive, but only raises the presumption that the officers acted within their authority."

Section 4559, R.S. Mo. 1929 relates to Parol contracts on the part of corporations, and is as follows:

"Parol contracts may be binding upon corporations if made by an agent duly authorized by a corporate vote, or under the general regulations of the corporation; and contracts may be implied on the part of such corporations from their corporate acts, or those of an agent whose powers are of a general character."

CONCLUSION

It is our opinion that the officers whose names are signed to the contract on behalf of the corporation have authority to bind the corporation and have done so by their acts. It is not necessary that the new officers ratify or sign the contract, but if you care to have any officer do so, it will be perfectly proper. The attached surety bond is in proper form, and in the event of default or refusal to comply with the terms of the contract by the Metropolitan Manufacturing Company, we think the surety company will be bound to the extent of \$5,000.

Respectfully submitted,

APPROVED:

OLLIVER W. NOLEN  
Assistant Attorney General

ROY MCKITTRICK  
ATTORNEY GENERAL