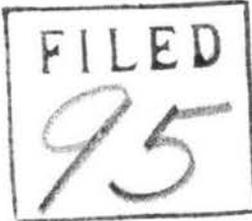


DIVISION OF EMPLOYMENT SECURITY: Purchase of all supplies for
SUPPLIES: Division of Employment Security
must be made through the State
Purchasing Agent unless he
authorizes direct purchases
by the Division.



July 31, 1953

Honorable Gordon P. Weir
Director
Division of Employment Security
Department of Labor and Industrial Relations
of Missouri
Jefferson City, Missouri

Dear Director Weir:

This complies with your request, by letter, of recent date, for an official opinion of this office whether or not your Division may without personal liability pay out of your administrative fund certain items of expense in the nature of advertising without first having such expenditures approved by the State Purchasing Agent.

Your letter reads as follows:

"We desire an official opinion of your office on the following question:

"The Division of Employment Security have a program whereby they do a considerable amount of advertising in the newspapers. Occasionally some of this advertising is done over the radio and television. Our administrative fund, of which this service is paid from is the Federal administrative fund appropriated to this Division.

"The matter involved is a 105 hours of technical work at \$5.00 per hour to draw up 35 cartoon drawings to be photographed and reduced to television slides and then the slides are used on television for advertising purposes.

Honorable Gordon P. Weir:

"However, to me this item would not clearly be within the realm of ordinary advertising, but would be the purchase of technical services and materials to be used in advertising.

"We are now presented with a bill in the amount of \$553.00, divided as follows: 105 hours at \$5.00 per hour, \$525.00; 35 drawings for television slides at 80¢ each, \$28.00; total \$553.00.

"The question is can we legally pay this item without it first having been requisitioned through the State Purchasing Agent of Missouri, without incurring liability on ourselves for so doing."

Section 34.030, RSMo 1949, provides that the purchase of supplies of all State Departments in this State shall be made by the State Purchasing Agent. Said section reads as follows:

"The purchasing agent shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided. The purchasing agent shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the constitution of the state."

Section 34.130, RSMo 1949, requires each Department to submit a classified list of its estimated needs to the Purchasing Agent for the fiscal year following. Said section reads as follows:

"On or before May first of each year, each department shall submit to the purchasing agent a classified list of its estimated needs for supplies for the following fiscal year. The purchasing agent shall consolidate these and may purchase the entire amount or such part thereof at one time as he shall deem best. Any contract for such purchases may provide only the price at which the supplies needed during the year shall be purchased and that the supplies shall be delivered in such amounts and at such times as ordered throughout the year and be paid

Honorable Gordon P. Weir:

for at such time and for such amounts as delivered. In such case, certification from the comptroller and the auditor shall be required only for the amount ordered at any time."

Section 34.100, RSMo 1949, provides that, under certain conditions any Department may make direct purchases of certain supplies. Said section reads as follows:

"The purchasing agent shall have power to authorize any department to purchase direct any supplies of a technical nature which in his judgment can best be purchased direct by such department. He shall also have power to authorize emergency purchases direct by any department. He shall prescribe rules under which such direct purchases shall be made. All such direct purchases shall be reported immediately to the purchasing agent together with all bids received and prices paid."

The particular items of your expenditure, as noted in your letter and concerning which the uncertainty as to whether payment of such items may safely be made out of said fund without authorization by the State Purchasing Agent has arisen, you say consist of cartoon drawings which are later photographed and then reduced to television slides which are shown on television as advertising. Your letter states that as your Division views the matter such procedure would constitute the purchasing of technical services and materials to be used as advertising.

We have seen from Section 34.030, supra, that the Purchasing Agent shall purchase all "supplies" for the Departments. This statute must be obeyed in order that the Director of any division may be relieved of personal liability respecting the purchase of or contracting for supplies and the direct payment therefor, unless under other sections of the Purchasing Agent Act Departments may be authorized by the Purchasing Agent to make direct purchases of certain supplies. But there are exceptions to this plan. It is provided in Section 34.100, supra, that there may be conditions under which direct purchases may be made by any Department by authority of the Purchasing Agent. Said Section 34.100 plainly gives the Purchasing Agent discretionary powers to permit any Department to purchase any supplies

Honorable Gordon P. Weir:

of a technical nature which in his judgment can best be purchased direct by such Department and to prescribe rules under which such purchases may be made.

In a later letter, in reply to our request for further information, you advise that the item described in your first letter, constituting the expenditure in question, was not supplied by the radio station, but "was contracted for without going through the purchasing agent with an individual who is in the professional business." It appears that the Director of your Division in office at the time and before the contract was made for the expenditure of this item had previously obtained verbal authority from the Purchasing Agent to make such contract and to purchase the said services and materials direct. Said former Director advises this office that the facts and conditions respecting the necessity for the contract and the purchase of this item were fully explained in detail to the then State Purchasing Agent with the statement that the artist in the production of such material would have to use his own ingenuity in the development thereof, with the implication that early delivery of such material for advertising purposes would be required, and that thereupon the then Purchasing Agent authorized the then Director of the Division to proceed with the arrangements so contemplated to contract and pay for such services and materials, and that then the contract with the artist was made; that consultation was had with the artist from time to time as the work progressed, and that several weeks later such former Director accepted delivery of the completed cartoon drawings.

It appears then, from the information in your letter and in the letter of such former Director, both submitted to this office, that such advertising by radio and television was carried out by such authorization, and by the fulfillment of said contract for the expenditure for such services and materials and that there has been sent to your Division a bill for the total amount of said expenditure.

We are advised that, among other rules promulgated by the Purchasing Agent under said Section 34.100, is Rule No. 16, which reads as follows:

"Rule 16. Departments may make purchases of emergency or technical nature, where immediate delivery is necessary, with the verbal permission of the Purchasing Agent.

Honorable Gordon P. Weir:

Vendors can be notified of such approval and make immediate delivery, and instructed not to make billing until departmental order is received. Departmental orders are to be made up at once and sent to Purchasing Agent for approval and encumbrance on the appropriation. Departments are to write on such order: 'This merely confirms a purchase previously made' (to avoid duplication)."

We believe the terms of said Rule No. 16 apply to the conditions and circumstances existing in the present case. It appears from such circumstances and conditions that such expenditure was of a technical character and that the completed development of such material by the artist required immediate delivery thereof in order for the Division to carry out the plan, so submitted to the Purchasing Agent, for advertising by radio and television. It further appears to us that the authority given by said Purchasing Agent to said Director to proceed to contract with the artist for the development and delivery of such items of material was proper, and was lawfully authorized by said Rule No. 16 and the provisions of said Section 34.100. We believe there was lawful authority for direct purchase thereof and payment therefor by your Division by reason of the verbal permission of the Purchasing Agent, and which would relieve, and does relieve, said former Director of your Division and you as the present Director of said Division from violation of the terms of said chapter and from any personal liability prescribed by the terms of Section 34.150, RSMo 1949, upon the payment direct of such expenditure by you as Director of said Division.

It appears clear, we believe, that since the Purchasing Agent is empowered to authorize any department by verbal permission to purchase, direct, supplies of a technical nature, and since such authority was given in this instance, after full explanation of the plan was made and was understood by him, such authorization would include all items of supplies constituting this expenditure and would render unnecessary the taking of bids on any items of such needs under the rules promulgated by the Purchasing Agent, whether over or under \$50.00, and thus having fully complied with the statutes in such cases made and provided, your Division is authorized by law to pay for such supplies without further reference to the office of the Purchasing Agent of this State.

Honorable Gordon P. Weir:

CONCLUSION

Considering the premises it is, therefore, the opinion of this office that under Section 34.030, RSMo 1949, all Departments must purchase supplies through the office of the State Purchasing Agent in order that the Director of any such Department may be relieved of personal liability for violation of the terms of said Chapter 34, RSMo 1949, unless authority is given by the Purchasing Agent, as was given in this instance, under Section 34.100 of said Chapter, or under rules promulgated by the Purchasing Agent, authorizing any Department to make direct purchases of certain supplies of a technical or emergency character in which event, if such authority is given by the State Purchasing Agent for any Department to purchase such supplies direct and such supplies are so purchased the Director of any such Department would be relieved of violation of provisions of said chapter and would not be personally liable for contracting for the purchase and payment for such supplies.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

GWC:irk