

*Attorney General of Missouri*

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OPINION LETTER NO. 52

Honorable Richard C. Hamilton  
Representative, District 131  
Room 405, State Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Hamilton:

This is in response to your request concerning the following questions:

"1. When awarding auctioneering contracts, is the state of Missouri limited to awarding such contracts only to auctioneers who are duly licensed under chapter 343, RSMo?

"2. Does the state purchasing agent have the right to disqualify someone who has bid on a state contract merely because the person making the bid does not comply with a regulation of the state purchasing agent, when such regulation has not been filed with the secretary of state as required by chapter 536, RSMo?"

Your request sets out the following facts:

"The state purchasing agent let bids for an auctioneering contract, and the lowest bid received was from a gentleman from Pulaski County. This gentleman's bid was disqualified because he did not have a license as required by chapter 343, RSMo, and because he did not have three years' experience as an auctioneer, which the state purchasing agent claims to require by regulation,

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although no such regulation has been filed with the secretary of state. The gentleman who was finally awarded this contract is not licensed under chapter 343, RSMo, either."

We have inquired further of the Division of Purchasing, Office of Administration, and are advised that the contract was not awarded to the lowest bid because that bidder did not have three years' experience as required by the bid specification. The fact that the lowest bid was received from a person who did not have an auctioneering license was given no consideration. The person granted the bid met the three year requirement.

It is apparent that the bid was not accepted because the bidder did not meet the specifications as set out by the Division of Purchasing. His failure to have a license had nothing to do with rejecting the bid.

Our view is that bid specifications do not constitute rules within the definition of rules under Section 536.010, RSMo Supp. 1976.

Under all the facts and the appropriate law, it is our further view that the purchasing agent had the authority to disqualify the bidder for failing to meet the specifications.

Yours very truly,



JOHN ASHCROFT  
Attorney General