

STATE PURCHASING AGENT: Authority to authorize emergency
direct purchases.

SB192 Sec 5 Laws 33

August 28, 1933

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Honorable George C. Johnson
State Purchasing Agent
Jefferson City, Missouri

Dear Mr. Johnson:

We hereby acknowledge receipt of your letter of August 28, 1933 requesting an opinion of this office on the following matters:-

"At the earliest possible moment, will you kindly advise me if, in your judgment, it is proper and legal for me to authorize State Institutions covered by the Act creating the office of State Purchasing Agent, to continue their present procedure in buying until such time as I am able to properly set up my office, arrange for the printing of the necessary forms, and the promulgation of proper rules and regulations as in said Act provided.

This appears to be authorized in Section Five of the Act.

Trusting that you can favor me with an immediate ruling, and thanking you in advance, I remain."

Section 5 of the State Purchasing Agent Act, as found on page 412 of the Laws of 1933, 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 above section clearly authorizes you to permit the Institutions to make emergency purchases. The purchases are to be made direct by the department or institution instead of through you. However, it is required that these emergency purchases be made under and consistent with rules and regulations promulgated by you.

"He shall prescribe rules under which such direct purchases shall be made."

You are required by this clause to formulate rules to govern these emergency purchases, and, in turn, all emergency purchases must be made in accordance with such rules.

It should also be kept in mind that this authorization extends only to emergency purchases, and is not applicable to purchases which do not fall within this classification. Before any authorization is granted, you should first satisfy yourself that the purchase contemplated is an emergency purchase, and one which cannot be delayed until your office is prepared to handle the purchase in the regular manner.

One of the primary objects of the act is to require competitive bidding for the contracts. The first sentence of Section 3 is,

"All purchases shall be based upon competitive bids."

The last clause of Section 5 reads:

"All such direct purchases shall be reported immediately to the Purchasing Agent together with all bids received and prices paid."

August 28, 1933

It is evident that all purchases made direct shall be made after receiving competitive bids. This is also suggested by Section 9 of the Act, parts of which read:

"All reports, bids, specifications and contracts, and all records of purchases and sales of any kind, whether by the Purchasing Agent or by departments as authorized by him, shall be kept in the office of the Purchasing Agent and shall be open to inspection by the public."

It is our suggestion that the rules and regulations promulgated by you covering direct purchases require the purchases be made only after the receiving of competitive bids.

We realize that you are confronted with the problem of permitting emergency purchases to be made before you have had time and opportunity to set up all rules and regulations provided for in the Act, but it is our opinion that you should at this time adopt temporary rules and regulations covering direct emergency purchases which will insure the fulfilling of the law by the departments or institutions, and will also permit an accurate record of all matters being kept by your office.

It is therefore the opinion of this office, that you are not authorized by law to permit State Institutions covered by the State Purchasing Agent Act to continue their present procedure in buying, but that you should adopt such temporary rules and regulations applying to direct emergency purchasing as will insure a compliance with the letter and spirit of the law by the institution affected, and permit a fulfillment of the requirements of the Act by your office.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

HGW:LC