

STATE PURCHASING AGENT:

Can not procure delivery of goods to departments with an agreement that the same may be considered as purchased when balance to pay therefor accumulates in State Treasury.

---

February 8, 1934

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



Dear Mr. Johnson:

The question submitted to this Department, as we understand it, is as to whether or not the proposed rule or regulation as follows:

"VENDOR - NOTICE

Although there is an unencumbered balance in the appropriation shown, sufficient to pay for the supplies listed hereon, due to lack of sufficient incoming revenue there is not at this time a sufficient cash balance in the Treasury to the credit thereof, thus creating an emergency. The State Purchasing Agent, being satisfied that these supplies are essential to the continued operation of the above department or institution, by this form invites you to furnish the supplies listed with the understanding by you that if and when the fund later shows an unencumbered cash balance sufficient to pay for these supplies, then, and not until then, shall this transaction be construed as a "purchase" by the State Purchasing Agent within the meaning of Section 4, page 412 of the laws of Missouri, 1933,\*\*\*\*\*"

may be legally promulgated and carried out under the State Purchasing Agent Act.

We are inclosing you herewith copy of opinion of this Department dated September 14, 1933 addressed to Honorable

Honorable George C. Johnson

-2-

February 8, 1934

Forrest Smith, State Auditor, Jefferson City, Missouri. I call your attention to what is said at pages 12 to 19, both inclusive. We further direct your attention to the definition of the word 'purchase' as found at page 18 of the opinion of this office to you dated December 6, 1933. Section 4 of the State Purchasing Agent Act (Laws Missouri 1933, page 412) specifically provides that the Purchasing Agent shall not furnish any supplies to any Department without first securing a certification from the Auditor showing, among other things, that an unencumbered balance remains in the fund from which payment for such purchase is to be made and sufficient to pay the purchase price of such purchase. A purchase without such certification renders the Purchasing Agent liable on his bond. Certainly a following out of the proposed rule and regulation would be to furnish supplies to a department and is, in legal effect, a purchase by the State Purchasing Agent, although payment therefor is delayed.

We think the promulgation and carrying out of the proposed regulation would violate the entire intent and purpose of the State Purchasing Agent Act.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General,

APPROVED:

---

ROY McKITTRICK  
Attorney General.

GL:LC

Inclosure