

HIGHWAY PATROL: Purchases for State Highway Patrol under jurisdiction of Highway Commission.

6-12

June 10, 1935.



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

Dear Sir:

This department is in receipt of your letter of June 7, 1935 requesting an opinion as to the following state of facts:

"Please refer to an opinion dated December 6, 1933, written by Mr. Gilbert Lamb and approved by you, in which it is held, among other things, that purchases of the Missouri State Highway Patrol are within the scope of the State Purchasing Agent law.

"Notwithstanding that opinion, the Highway Patrol recently requested the State Highway Department to purchase for them, sixty automobiles. It is our belief, based upon the opinion referred to, that the Highway Patrol, instead, should have requested this office to make the purchases. We enclose copies of correspondence which have passed on this subject.

"It is our further understanding that the Highway Department has asked for bids on these automobiles, such bids to be opened on Monday, June 10. We would appreciate a specific opinion from you confined to the sole question of the status of the Highway Patrol with respect to the State Purchasing Agent, and if such opinion is in line with the opinion dated December 6, 1933, we would appreciate your further advice as to what steps should be taken by us to protect the interests of this department in connection with the above transaction."

The State Purchasing Agent Act (Laws of Mo. 1933, page 410) substantially provides that the Purchasing Agent shall purchase "all supplies except printing, binding and paper, as provided for in Chap. 115, R.S. 1929, for all departments of the State, except as in this Act otherwise provided."

Section 44a, Article IV of the Constitution of the State of Missouri, which said section provides for a State highway system, provides in part as follows:

"All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law."

By this section of the Constitution it is clear that the cost of administering and enforcing any state motor vehicle law should be borne by the motor vehicle registration fees, license taxes and state taxes on the sale or use of motor vehicle fuels.

Section 12 of the Act creating the Missouri State Highway Patrol (Laws of Mo. 1931, page 230, provides in part as follows:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws

of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the Commission.****"

Section 20 of that Act provides:

"All salaries and expenses of members of the patrol and all expenditures for vehicles, equipment, arms, ammunition, supplies and salaries of subordinates and clerical force and all other expenditures for the operation and maintenance of the patrol shall be paid monthly and shall be paid by the state treasurer out of the proceeds of state motor vehicle fees and license taxes and state taxes on the sale or use of motor vehicle fuels as provided in section 44a of Article IV of the Constitution of this state as amended by a vote of the people at the general election November 6, 1928 upon warrants drawn by the state auditor based upon bills of particular and vouchers certified by the officer or employee designated by the commission."

The case of State of Missouri at the relation of R. Newton McDowell, Inc., a corporation, relator, v. Forrest Smith, State Auditor of the State of Missouri, respondent, 67 S.W. (2d) 50, decided by the Supreme Court of Missouri, En Banc, was an action by relator to compel the State Auditor to audit its account covering a purchase from the relator by the State Highway Commission of specified quantities of crushed rock, being materials for use in the construction of a part of the supplementary system of the state highway system. The court issued its peremptory writ of mandamus against the Auditor. At page 56 of the opinion the court states the issue in that case as follows:

"We come now to the decisive question in the case: With reference to the purchase, and matters connected therewith and incidental thereto, of

road material by the Commission for use in the construction of state highways, which law prevails as between the State Purchasing Agent Act and what we shall term the Highway Act, if and so far as they may be found to be in conflict?"

* * *

"From the constitutional amendment it is perfectly clear, not only that the raising and expenditure of the money for the construction and maintenance of all roads and state highway system was placed largely in the discretion and under the supervision of the Commission, but that the power to acquire material for construction of the supplementary roads is likewise express and clear. The Legislature is required to enact such laws as may be necessary to carry the amendment into effect."

* * *

"Also it appears that the Highway Act, passed of necessity for the specific purpose of carrying out the constitutional mandate, makes of the legal entity, the Commission, with its subordinates, a self-sufficient, integrated and well-nigh autonomous agency and confers upon it untrammelled power to supervise and control the construction, and to purchase materials used in the construction, of state highways as provided in said Act, and to control all matters incident thereto and connected therewith, - such as plans, specifications, contracts for construction or improvement, or materials therefor; the advertising for bids, passing on the bids, the execution of contracts with the successful bidders, and so forth. All of these powers are conferred in detail and are again included collectively in a section of the Act (8094) which declares that the Commission as created is 'vested with the duties and powers specified in this article and also all powers necessary or proper to enable the

Commission or any of its officers and employes to carry out fully and effectively all of the purposes of the article.' In respect of road construction and its connected incidents nothing is omitted."

At page 58 of the decision, the Court said:

"In view of these considerations and the established rules of construction to which reference has been made, it seems altogether clear that the purchase represented by the claim in suit does not come within the operative effect of the State Purchasing Agent Act aforesaid, and that the relator herein was and is, under the controlling law, entitled to the warrant sought at the hands of the respondent."

CONCLUSION

It is apparent from the above decision that insofar as the supplies necessary to be used by the State Highway Commission are concerned, the Commission is exempt from the operation of the State Purchasing Agent Act. The last sentence of Section 44a, Article IV of the Constitution provides that "the General Assembly shall enact such laws as may be necessary to carry into effect this amendment." It is our opinion that the Act creating the Missouri State Highway Patrol is within the scope of this constitutional amendment and was passed by the Legislature of the State of Missouri with the intention of carrying out the purpose of the amendment.

Inasmuch as under Section 20 of the Act the expenses are to be paid as provided in Section 44a, Article IV of the Constitution and are to be paid upon warrants drawn by the State Auditor based upon bills of particular and vouchers certified by the officer or employee designated by the State Highway Commission, the expenses of the State Highway Patrol are in the same class as other expenditures by the State Highway Commission and do not come within the operative effect of the State Purchasing Agent Act.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

JWH:AH