

PURCHASED AGENT ACT: Construction of Section 48-A, House Bill 509.
APPROPRIATION ACT: Cannot include general legislation.

October 5, 1937

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Hon. George Blowers
Purchasing Agent
Jefferson City, Missouri

Dear Sir:

We have your request of October 5, 1937, for an opinion of this Department reading as follows:

"Will you please advise if we must buy materials from Missouri firms when the out-state firms bid low on the same material.

This opinion is wanted for Section 48a of Appropriation Bill No. 509."

The Section you refer to, 48-A, is a part of an appropriation Act, H.B. 509, passed by the 1937 Legislature, and found on page 116, Laws of Missouri 1937, reading as follows:

"All materials contracted for by the State Purchasing Department wherever and whenever possible, shall be purchased from Missouri merchants, wholesalers and retailers, manufacturers, jobbers or producers."

Turning to the State Purchasing Agent Act, Laws of Missouri 1933, page 410, we find that Section 3 of that Act provides that all purchases shall be based on competitive bids; that the contract shall be let to the lowest and best bidder.

Section 12 of the Act provides that the Purchasing Agent shall give preference to Missouri firms when quality and price are approximately the same.

If Section 48-A, supra, is to be construed as a modification or limitation upon any section of the State Purchasing Agent Act then it would be unconstitutional and in violation of Article IV, Section 28 of the Constitution of this State which provides that bills passed by the Legislature shall not contain more than one subject, which shall be clearly expressed in its title. The purpose of an appropriation bill is to set aside moneys for a specific purpose and not to change the statutory law of this state. This interpretation of the constitutional provision, supra, is supported by the following authorities:

State ex rel. vs. Thompson, 289 S.W.
338, 1. c. 340.

State ex rel. Davis vs. Smith, 75
S.W. (2)828.

In the last named case the Supreme Court said, 1. c.

830:

"Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation had attempted to amend Section 13525, it would have been void in that it would have violated Section 28 of Article IV of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as Section 13525, and the mere appropriation of money, are two entirely different and separate subjects."

To construe Section 48-A of the Appropriation Act as legislative in character so as to require the Purchasing Agent to buy materials from Missouri firms, when those firms are not the lowest bidder, would in effect be giving it the force and

October 5, 1937

effect of a statute or general law which the Legislature could pass as an amendment of the State Purchasing Agent Act. To so construe Section 48-A, as a general law, would make it unconstitutional.

However, it is apparent that the true meaning of Section 48-A is that the State Purchasing Agent Act shall give preference to Missouri firms "whenever and wherever possible", which means when he can legally do so. In order for the State Purchasing Agent to legally give preference to such Missouri firms they must be either the lowest and best bidder, or must have submitted a bid equal to the bid of out-of-state firms, taking into consideration the same quality and character of the material to be purchased.

It is therefore the opinion of this office that the State Purchasing Agent must buy from the lowest and best bidder as is required of him under Section 3 of the Purchasing Agent Act, and that in the event of tie bids preference should be given to the Missouri firms under Section 12 of the Purchasing Agent Act and Section 48-A of the above appropriation act.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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