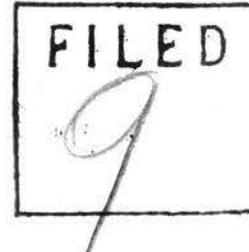


STATE PURCHASING AGENT: Right to dispose of property owned by the State or any department thereof.

June 30, 1938.

6-30

Hon. George Blowers,  
Purchasing Agent,  
Jefferson City, Missouri.



Dear Sir:

We are in receipt of your request for an opinion, which is as follows:

"State Hospital No. 3, Nevada, Missouri, will soon have on hand approximately 3,000 bushels of wheat produced from the farms. They are very desirous of trading this wheat to the flour mills for flour.

"Will you kindly render an opinion as to the legality of this transaction."

Relative to the problem you present, it resolves itself into this: Can the Hospital, through your office, purchase flour and pay for it in wheat, or can the Hospital exchange or trade wheat for flour? We will endeavor to answer the two questions in order.

I.

CAN THE HOSPITAL PURCHASE FLOUR AND PAY FOR IT IN WHEAT, OR, PUT DIFFERENTLY, CAN IT SELL THE WHEAT AND BE PAID FOR IT IN FLOUR?

The pertinent sections of the State Purchasing Act as found in the Laws of 1933, at page 410, et seq., provide in part as follows:

"Sec. 3. All purchases shall be based on competitive bids. On any purchase where the estimated expenditure shall be two thousand dollars (\$2,000.00) or over, the Purchasing Agent shall advertise for bids \* \* \*. On purchases where the estimated expenditure is less than two thousand dollars (\$2,000.00) bids shall be secured without advertising. \* \* \*"

"Sec. 4. \* \* \* The Purchasing Agent shall not furnish any supplies to any department without first securing a certification from the auditor that an unencumbered balance remains in the appropriation and allotment to which the same is to be charged and that an unencumbered balance remains in the fund from which payment is to be made, each sufficient to pay therefor. \* \* \*"

Hence, it seems reasonably clear from the context of the above sections that it is the legislative intent that the purchases contemplated are such that are to be paid for in money or funds appropriated by the Legislature, and not a purchase to be paid for in some commodity, by reason of the fact, if for no other reason, that the Auditor is required to certify that there is money on hand wherewith to pay for the purchase.

Turning to that part of the above question proposed, namely, can the Hospital sell the wheat and be paid for it in flour, Section 7 of the Act deals with the authority of the State Purchasing Agent in this respect, to-wit:

"The purchasing Agent \* \* shall also have power, subject to the same provisions as for bids for purchases, to sell any \* \* unneeded \* \* property in his hands or owned by the State or any department thereof."

It is to be observed that the power of the State Purchasing Agent to sell is subject or limited to the same provisions as for bids for purchases, which means, as we construe this section, that advertisements should be made--depending on the value of the property--calling for bids, and the award made to the highest and best bidder.

If our view is correct, as hereinbefore stated, that it is contemplated by Sections 3 and 4, supra, that all purchases are to be made upon a cash or money basis, then applying the same provisions to sales, as required by Section 7, the consideration the State, or any department thereof, should receive should be cash or money.

## II.

### CAN THE HOSPITAL EXCHANGE OR TRADE THE WHEAT FOR FLOUR?

It is pertinent here to determine the legal character of the proposed transaction.

In the case of *Martin v. The Ashland Mill Co.*, 49 Mo. App. 23, the facts were that it had been the custom of the mill for many years to receive wheat from the neighboring producers, and allow them, according to custom, so many pounds of flour per bushel, to be subsequently delivered on demand, or to pay them, at their option, the value of the wheat in money. The plaintiff delivered his wheat to the mill but failed to receive his flour thereafter by reason of the mill being destroyed by fire. One of the questions presented in the case was the legal character of the transaction. On this issue the court said, page 29:

"Whether the transaction was a sale or not depends upon whether it contained these elements: First, parties competent to contract; second, mutual consent; third, absolute property in the thing which was the subject of the transfer; fourth, a price in money. Tiedeman on Sales, sec. 1. The consideration agreed upon for the delivery of the wheat was a specific quantity of flour, and not a price in money. And, therefore, the transaction was not a sale within the meaning of the rule just stated. \* \* \*

June 30, 1938

"The transaction between these parties was, properly speaking, an agreement for an exchange of goods and not for a sale."

Hence, assuming for the purpose of argument, that you have authority to enter into a sale or purchase for a commodity consideration, that is, other than money, yet it is manifest, in view of the above opinion, that the transaction you propose constitutes an exchange of property and not a sale or purchase thereof.

Section 7 of the Act permits you to make inter-department transfers of supplies, but we are unable to find anywhere within the entire fourteen sections of the Act any authority, express or implied, which would permit you to exchange or trade any of the property of the State, or of any department thereof, for the property of any individual, firm, or corporation, save and except the inter-department transfers mentioned.

#### CONCLUSION

It is the opinion of this office that you, as State Purchasing Agent, and likewise the Hospital, are without authority to exchange or trade the wheat mentioned to any flour mill for flour.

Respectfully submitted,

J. W. BUFFINGTON,  
Assistant Attorney General.

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General.

JWB:HR