

STATE PURCHASING AGENT) The State Treasurer rather than the State  
) Purchasing Agent is given the duty by law  
STATE TREASURER ) to purchase liquor stamps.

---

October 28, 1939

Hon. Robert W. Winn  
State Treasurer  
Jefferson City, Missouri

Dear Sir:

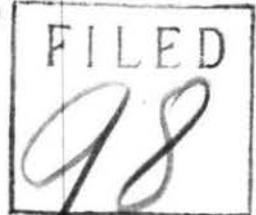
We have received your letter of October 2, which reads as follows:

"According to Section 13, Laws of Missouri, Extra Session, 1933-34, it is the duty of the Supervisor of Liquor Control to prescribe an official seal and label for the collection of liquor tax on intoxicating liquors.

"It is my understanding that it is the business of the Supervisor of Liquor Control to furnish specifications for the buying of said stamps. It seems to be the business of the State Treasurer to furnish these stamps for the State Liquor Control Department. The General Assembly has always made an appropriation to the State Treasurer with which to buy these stamps.

"I would like an opinion from your department advising me whether I should buy these stamps with bids through the State Purchasing Department under the State Purchasing Law of 1933, or whether I shall ask for bids myself for the buying of State liquor stamps."

The act creating the office of State Purchasing Agent and prescribing his powers and duties was passed by the Fifty-Seventh General Assembly in 1933 and is



contained in Laws of Missouri, 1933, pages 410 to 414, inclusive. In substance, this act provides that the Purchasing Agent shall purchase all supplies except printing, binding and paper for all departments of the state; that all purchases shall be based on competitive bids and no department shall make any purchase except through the Purchasing Agent, except as the act might otherwise provide.

At the Extra Session of the Fifty-Seventh General Assembly following the regular session, the Liquor Control Act was passed. This act is contained in the Laws of Missouri, Extra Session, 1933-34, pages 77 to 95, inclusive. Relating to the purchase of the stamps in question, the Legislature enacted Section 35 of the Liquor Control Act which reads as follows:

"It shall be the duty of the State Treasurer, upon the taking effect of this act, to provide suitable and inimitable state certificates and labels for this inspection, gauging and labeling, having on each proper places for counter-signing by the State Treasurer and Supervisor of Liquor Control, and shall safely keep the same together with the plates used in making them, when not in actual use. The State Treasurer shall from time to time upon demand, deliver the aforesaid labels to the Supervisor of Liquor Control, taking therefor his receipt, and shall charge said Supervisor of Liquor Control with the same; and shall from time to time, as said Supervisor of Liquor Control makes returns of moneys collected in the course of his inspection, credit said Supervisor of Liquor Control's account with such sums, and shall keep a true and correct book account of his dealings with said Supervisor of Liquor Control."

In the same act and at the same time, the Legislature enacted Section 13, giving certain duties to the Supervisor of Liquor Control. Said section reads in part as follows:

"\* \* \* prescribe an official seal and label and determine the manner in which such seal or label shall be attached to every package of intoxicating liquor so sold under this act; this includes prescribing different official seals or different labels for the different classes, varieties or brands of intoxicating liquor; \* ."

While said Section 13 was amended by the Legislature in 1937, the above quoted part was not disturbed or altered in any way. It appears, therefore, that the Legislature intended for the Supervisor of Liquor Control to prescribe the form and type of seals and labels to be attached to every package of intoxicating liquor sold in this state and that "It shall be the duty of the State Treasurer, upon the taking effect of this act, to provide suitable and inimitable state certificates and labels". In other words, the duty was directly placed on the State Treasurer to provide the stamps. The Legislature did not say that the Purchasing Agent or any other officer should provide the stamps or that the Treasurer could, in any way, delegate this power. On the contrary, the Legislature said in definite terms that the duty shall devolve upon the State Treasurer to provide suitable stamps. In other words, while the Legislature provided in the 1933 session that the Purchasing Agent should purchase all supplies, the same Legislature in a subsequent session, took away from him the authority to purchase and provide the liquor stamps, and gave this particular function to the State Treasurer.

In discussing the meaning of the word "provide", the Kansas City Court of Appeals in the case of Hoffman v. Mastin, 119 S.W. (2nd) 1027, at l.c. 1029, quoted from Webster's Dictionary as follows:

"'Provide' is defined by Webster as:

"2. To look out for in advance; to procure beforehand; to prepare.

"3. To supply for use, afford; contribute; yield.

"4. To furnish, supply, stock with.

"5. To equip in preparation; fit out with means to an end."

It will be observed that the word "provide" means to "furnish" and to "supply". Referring again to Section 35, it appears that the State Treasurer is the one person specifically authorized by the Legislature to "furnish" and "supply" the stamps; that the State Treasurer, as the one authorized to furnish and supply the stamps, is the only one authorized to do so. It would be difficult to say that the Legislature in placing the duty on the State Treasurer to provide, furnish and supply certain equipment, really intended that he was not to have full power to fully carry out this mandate, but rather that he was to request another state officer to perform this particular duty for him. Such a construction does not seem reasonable.

As we have stated, Section 35 was passed after the Purchasing Agent Act was enacted into law and at a subsequent session of the same Legislature. Section 35 was undoubtedly intended as a special act relating solely to the acquisition of state liquor stamps and to no other commodity. The Purchasing Agent Act is obviously a general statute relating to all purchases except, of course, any matters which the Legislature might later see fit to exclude from its operation.

As the Supreme Court said in the case of *State ex inf. Barrett v. Imhoff*, 291 Mo. 603, l.c. 617:

"We have said, not once, but a number of times that where there are two acts and the provisions of one have special application to a particular subject and the other is general in its terms and if standing alone would include the same matter and thus conflict with the special act, then the latter must be construed as excepted out of the provisions of the general act, and hence not affected by the enactment of the latter."

Therefore, since the State Purchasing Agent Act would have included the same matter, that is, the providing of liquor stamps, had Section 35 not been passed placing this particular duty in the hands of another, such duty is excepted out of the duties of the State Purchasing Agent and the same is given solely to the State Treasurer.

Furthermore, it has been the practice of the State Treasurer to purchase directly such stamps ever since the present Liquor Control Act has been a law. The State Treasurer has always made such purchases direct and has always fully "provided" the stamps for use by the Supervisor of Liquor Control after the Supervisor has designed the form, etc. The Purchasing Agent has never provided such stamps according to our understanding. This procedure has always been the departmental construction by the departments involved. The courts have always held that departmental constructions are entitled to great weight.

In the case of *In Re Bernay's Estate*, 126 S.W. (2d) 209, 1.c. 217, the Supreme Court of Missouri said:

October 28, 1939

"It is true that the construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous."

CONCLUSION.

It follows, therefore, that the Legislature, in enacting Section 35 of the Intoxicating Liquor Laws, provided a special statute authorizing and directing the State Treasurer to fully "provide" liquor stamps for use by the Supervisor of Liquor Control, and that this duty was thereby excepted out of the provisions of the Purchasing Agent Act which is an earlier enactment giving to the State Purchasing Agent the right generally to make all purchases. The power and duty to provide liquor stamps, consequently, is exclusively vested in the State Treasurer and he should make all such purchases.

Respectfully submitted,

J.F. ALLEBACH  
Assistant Attorney General

APPROVED BY:

---

J.E. TAYLOR  
(Acting) Attorney General

JFA:VAC