

INSURANCE:
PENAL DEPARTMENT:
APPROPRIATIONS:

A five-year contract for insurance for the protection of penal institutions may be executed and payment made out of the biennial appropriation for 1943-1944.

April 29, 1943



Mr. Karl Autenrieth
Auditor
Department of Penal Institutions
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request, for an official opinion, which reads:

"Will you give us an opinion at the very earliest possible moment as to whether or not we can contract and pay for Boiler Insurance covering a five-year period.

"There is quite a saving in purchasing insurance on this basis rather than yearly. However, the question arises whether or not the Board can legally enter into a contract of this nature and pay for the service out of present appropriation, (1943-1944). This insurance covers liability and property damage at all of our institutions.

"Present policy expired April 15, 1943."

The Commissioners of the Department of Penal Institutions have the control and management of all Penal Institutions. Section 8972, R. S. Missouri 1939, in part reads:

"* * * * *The Department of Penal Institutions shall be under the control

* * * * *three members,* * * * *
who shall have and exercise the powers,
and perform the duties and functions
in this article provided, and as other-
wise authorized by law. * * * * *
Said department of penal institutions
shall have and exercise control and
jurisdiction over all penal institutions
in this state supported in whole or in
part by the direct appropriation of
money out of the state treasury, * * *
together with all real estate, build-
ings, machinery and personal property
belonging to or used by, or in connec-
tion with, said penal institutions, or
any thereof."

Section 8985, R. S. Missouri 1939, in part reads:

"The commission of the department of
penal institutions shall, subject to
law, have the exclusive government,
regulation and control of the Missouri
state penitentiary,* * * * *
and shall be vested with and possessed
of all other powers and duties neces-
sary and proper to enable it to carry
out fully and effectually all the pur-
poses of this article. * * * * *"

In Walker v. Linn County, 72 Missouri 650, l. c. 653,
the court held that the county court had authority to enter into
a contract of insurance on buildings belonging to the county in
order to preserve said buildings. We believe that the duty de-
volving upon the commissioners of the Department of Penal Insti-
tutions in the foregoing sections will permit said commission
taking out insurance for the protection of said buildings. Fur-
thermore, assuming that the Sixty-second General Assembly shall
pass and the Governor approve House Bill #411 in its present form,
which represents an appropriation for said penal institutions, we
are of the opinion said appropriation is broad enough to cover
such contemplated contract of insurance under "operation" which
specifically includes the word "insurance". Such appropriation
is for the years 1943-1944.

Now, we come to the important feature in your request, that is, can the commission enter into a contract for insurance for the next five years and pay for such insurance from the appropriation for 1943 and 1944. In the first instance such a contract must be finally executed by the purchasing agent for the State. Under Section 14590, R. S. Missouri 1939, it provides the purchasing agent shall purchase all supplies for all departments with the exceptions of printing, binding and paper.

"The purchasing agent shall purchase all supplies except printing, binding and paper, as provided for in chapter 120, R. S. 1939, for all departments of the state, except as in this chapter otherwise provided. He shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the Constitution of the state."

Supplies are defined in Section 14599, R. S. Missouri 1939, which reads:

"The term 'supplies' used in this chapter shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except as in this chapter otherwise provided. Contractual services shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service. The term 'department' as used in this chapter shall be deemed to mean department, office, board commission, bureau, institution, or any other agency of the state."

It is our opinion that the purchase of insurance comes under the term 'contractual services' and therefore it becomes the duty of the purchasing agent to contract for any such insurance.

The Supreme Court has often ruled that when a city, county, town, township or other political corporation or political subdivision of the State enters into a contract which is executory and contingent it does not create a debt within the meaning of Section 12, Article X of the Constitution of Missouri. An example is where a contract is entered into whereby the political

subdivision agrees to pay \$2000.00 annually over a period of twenty years, and the county agrees to furnish waters for that consideration; if the water is not furnished there is no agreement to pay. (See Lamar W. & E. L. Co. v. City of Lamar, 128 Missouri 188; 140 Missouri 156.)

An example of a contract which is not executory and not contingent, which is an attempt to anticipate income and revenue of the county for several years following the year the contract became effective, and which constitutes a debt and is void, is where the county agrees to pay \$4320.00 for the use of rooms for four years, beginning August 1, 1925, payable \$90.00 on the first day of each month in advance. Such payment comes from income of future years and such payment is not contingent upon the occupancy of the rooms or by the furnishing of said rooms to the county for that purpose. (See Ebert v. Jackson Co., 70 S. W. (2) 918, l. c. 920.) While the above examples and authority are not exactly in point in determining the question herein, it is somewhat analogous in that the political subdivision must not exceed the anticipated revenue for the current year and cannot anticipate revenue in years to come unless such agreement or contract is executory and contingent.

Article X, Section 19 of the Constitution of Missouri provides as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

It will be seen from the foregoing provision that an appropriation cannot be drawn upon after two years from the date of

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passage of said appropriation act. Under State ex rel. v. Holladay, 64 Missouri 526, the court expressed the view that each legislature should appropriate money for the biennium for which it was elected and that an appropriation made by one legislature should not remain open to be drawn upon by future legislators for obligations incurred after the two years had lapsed from passage of said appropriation act. However, we find no decision prohibiting the execution of an insurance contract covering protection to penal buildings for the next five years and the premium for the five years period being paid, now, out of the appropriation for the years and biennium, 1943-1944. Such premium could not be extended and paid out of anticipated appropriations in future years. This expenditure comes within the contemplated appropriation, namely, House Bill 411 which specifically permits the expenditure of such appropriation for insurance. We are, of course, premising this opinion upon House Bill 411 being passed and approved by the Governor in its present form.

We understand one reason for desiring to execute a contract for a five years period is that it follows the custom and by so doing it is quite a saving to the State of Missouri.

Therefore, it is the opinion of this Department that such a contract may be executed by the state purchasing agent and said premium upon said policy shall be paid out of the appropriation for the biennium, 1943-1944.

Respectfully submitted

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General of Missouri

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