

**PURCHASING AGENT:** An employee of a department may be designated to certify as to sufficiency of appropriations and allotments on purchases through purchasing agent.

January 26, 1944.

Honorable Forrest C. Donnell,  
Governor of Missouri,  
Jefferson City, Missouri.



Dear Governor Donnell:

Your letter of January 4, 1944, is as follows:

"Section 14592 (H. B. 500 of the Sixty-Second General Assembly of Missouri; Laws of Missouri of 1943, l.c. 1005) reads as follows:

"No department shall make any purchase except through the purchasing agent as in this chapter provided. The purchasing agent shall not furnish any supplies to any department without first securing a certification from an official of the department, designated by the department to act in its behalf, and who shall furnish bond in an amount deemed sufficient by the Governor to protect the state against any loss, that an unencumbered balance remains in the appropriation and in the allotment to which the same is to be charged, sufficient to pay therefor. The purchasing agent shall be liable personally and on his bond for the amount of any purchase made by him without such certification and the departmental official shall be liable personally and on his bond for the amount of any false certification."

Your opinion is respectfully requested on the following question:

"May the Governor designate an employee of the Governor's office as an official referred to in said Section 14592?"

The precise question presented is whether an "employee" of your office is an "official" of the department within the meaning of the latter term as used in Section 14592, as set forth in your letter. We find that on occasions courts hold the term "official" to designate an officer in the technical sense of that word, and on other occasions it is held to mean a mere employee, depending in each instance upon the context in which the word is found and the legislative intent. For example, in *Loard v. Como*, 137 S.W. (2d) 880, 882 (Tex.) it is said:

"There are material distinctions between one occupying an official position and another who performs duties purely by virtue of employment. An official may be and often is elected by the resident electors; he subscribes the oath of office and is entrusted with the performance of some of the sovereign functions of government; is subject to removal for failure to so perform the duty or for misconduct or malfeasance in office; his election or appointment is for a definite period of time and his services thereby become continuing and permanent rather than temporary and transitory, as is the case of an employee\* \* \*."

This case, in defining an official, applies the usual criteria followed in Missouri in distinguishing between an officer and an employee. *State ex rel. Pickett v. Truman*, 64 S.W. (2d) 105; *State ex rel. Walker v. Bus*, 135 Mo. 325; *State ex rel. v. Hackman*, 300 Mo. 59; and *Hasting v. Jasper County*, 314 Mo. 144.

An example of the other line of authority is *Love v. Miss. Cottonseed Products Co.*, 159 So. 96 (Miss.) where it is said:

"An official is not necessarily an officer in the technical sense, but may be one having subordinate administrative or executive powers in a governmental or public institution."

Of course, the reason underlying this rule is that "the word 'official' and the cognate words 'office' and 'officer' are

often used in a broad sense" (Pennell v. City of Portland, 125 Atl. 143, 144 (Me.)) rather than in the restricted technical sense.

Turning to the statute in question, we find that this certifying "official" is to be "designated by the department to act in its behalf." A department can only act to make this designation through the executive head thereof, which is either a board or a single individual. It does not appear that the Legislature had in mind that a department head would designate himself to do this act, but rather some other person. If self designation was contemplated, then this language is exceedingly misleading for it gives the impression that someone other than the department head will function as certifying official. Further, there are several departments having no one in them except the head thereof that could qualify as an "officer" in the technical sense of that word. One example of that situation appears in Chapter 105 R. S. Mo. 1939, relating to the State Purchasing Agent, where the statutes create no other position in that department other than the purchasing agent. There is not a single mention of such positions as deputy, chief clerk, or even employees. It would seem strange, indeed, in that situation, for the General Assembly to require the Purchasing Agent's Department (which acts only through the purchasing agent) to designate the purchasing agent (himself, since he is the only officer in that department) as certifying official. Yet, if the term "official" is construed as meaning "officer" in a technical sense, that is what we must conclude the General Assembly required. If that is what that body intended the language used to express, then, to say the least, it certainly expressed its intention in a confusing way, when much simpler and more direct language could have easily been employed.

We do not think it can be said that the General Assembly would use such confusing language to express the idea that in a department, such as the purchasing agent's department, the department head is to act as certifying official. And it is not necessary to attribute such poor method of expression to the General Assembly, if the word "official" is construed as meaning one having subordinate administrative powers, such as are possessed and exercised by employees of departments.

All things considered, we are of the opinion that the word "official" was not used to exclude an employee (as distinguished from an officer) from being designated as certifying official of a department under Section 14592.

Honorable Forrest C. Donnell,

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CONCLUSION

It, therefore, is our opinion that the Governor may designate an employee of his office to certify as to the sufficiency of appropriations and allotments in making purchases through the State Purchasing Agent.

Respectfully submitted,

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APPROVED:

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Attorney-General.

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