

STATE PURCHASING: Re: The State Purchasing Agent is un-  
AGENT: authorized to trade in old equip-  
ment for new or better equipment.

August 14, 1945



Mr. Wm. L. Smith  
State Purchasing Agent  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Smith:

In your letter of August 1, 1945, you requested an opinion of this office, which letter reads as follows:

"We have a requisition from the Northwest Missouri Teacher's College, Maryville, Missouri requesting us to purchase ten new Underwood Typewriters. They have ten obsolete typewriters of various makes, which they choose to trade-in for these new machines.

"We also had requests from other departments along the same line where they request trade-ins on calculators, typewriters, office equipment, etc. Also, trade-ins on automobiles has been another subject of inquiry by various departments.

"I would very much appreciate your opinion as to whether or not these trade-ins are legal."

We think there are two questions presented in your request.

(1). Is there any provision of the new Constitution of 1945 which would prohibit the trade-in transaction?

(2). Is the State Purchasing Agent authorized to make exchanges or trade-ins under Section 14589 and seq?

Section 15 of the Constitution of Missouri of 1945 provides

in part as follows: (Page 31)

"\* \* \*All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state.\* \* \*"

It is our opinion that the above Constitutional provision would not apply to the case of a trade-in transaction, since there would be no money received by the State. The old article would merely be used in order to reduce the purchase price of the new article.

However, there remains the question of the State Purchasing Agent's authority under the statutes creating his office, to trade in or exchange property.

Section 14590, R. S. Mo., 1939, provides as follows:

"The purchasing agent shall purchase all supplies except printing, binding and paper, as provided 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."

Section 14591, R. S. Mo., 1939, provides, in part, as follows:

"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 in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders at least five days before bids for such purchase are to be opened. On purchases where the estimated expenditure is less than two thousand dollars (\$2,000.00) bids shall be secured without advertising. In all cases, the purchasing agent shall post a notice of

the proposed purchase on a bulletin board in his office. He shall also on all purchases estimated to exceed two thousand dollars (\$2,000.00) solicit bids by mail from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the purchasing agent so as to reach such office before the time set for opening bids. The contract shall be let to the lowest and best bidder. The purchasing agent shall have the right to reject any or all bids and advertise for new bids, or, with the approval of the governor, purchase the required supplies on the open market if they can be so purchased at a better price.\* \* \*"

Section 14592, R. S. Mo., 1939, provides, in part, as follows:

"No department shall make any purchase except through the purchasing agent as in this chapter provided.\* \* \*"

Section 14595, R. S. Mo., 1939, reads, in part, as follows:

"The purchasing agent shall have the power to transfer supplies from any department where they are not needed to any other department where they are needed and to direct that proper charges and credits be made on the appropriations of the departments concerned. He shall also have power, subject to the same provisions as for bids for purchases, to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof.\* \* \*"

An examination of the statutes quoted above reveals that the State Purchasing Agent has the power to "sell" property owned by the State and, too, that the Agent must purchase and sell in a certain prescribed manner. The two main questions arising with regard to his authority in the instant situation, is whether the State Purchasing Agent can be said to have authority to make

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such a transaction and whether, if he has such power, he can comply with the statute regarding bids.

In construing statutes the primary rule is to arrive at the legislative intent as expressed in the statute. *American Bridge Co. vs. Smith*, 179 S. W. (2d) 12. The primary rule of construction of statutes is to ascertain the lawmaker's intent from the words used, if possible. *City of St. Louis vs. Pope*, 126 S. W. (2d) 1201, *Artophone Co. vs. Coale*, 133 S. W. (2d) 343. Provisions not plainly written in a statute or necessarily implied will not be imparted or interpolated in order that the existence of a right may be made to appear when otherwise, on the face of the Act, it would not appear. *State ex rel. Mills vs. Allen*, 128 S.W. (2d) 1040, 344 Mo. 743; *Sayles vs. Kansas City Structural Steel Co.* 128 S.W. (2d) 1046. The entire statute must be considered in determining the meaning of any particular portion thereof. *De Jarnett vs. Tickameyer*, 40 S. W. (2d) 686. Those statutes which are in pari materia must be construed together. *State ex rel. McKittrick vs. Carolene Products Co.* 144 S. W. (2d) 253; *Holden vs. Elms Hotel Co.* 92 S. W. (2d) 620. The statute before us must be construed in the light of the above canons of statutory construction.

A reading of the statutes relating to the State Purchasing Agent reveals that there is no express power granted the agent to exchange or transfer property, except from one department of the State to another department of the State. Does the agent, then, have the power to make such a transaction under his authority to "sell"?

The Missouri courts have taken the position that a sale is distinguishable from an exchange, and that there must be a price in money paid for goods if the transaction is to be termed a sale. In *Freund Motor Co. vs. Alma Realty and Investment Co.* (1940 Mo. App.) 142 S. W. (2d) 793, a motor car company leased a sales room, garage and machine shop. The rental was to be one per cent of the total gross sales made by the company. The company took a used car in as part payment on a new car. It then sold the used car. The company paid the one per cent on the original new car transaction without deducting the value of the old car taken in on the trade. The court had before it the question of whether this used car trade-in was a transaction which came within the term "sale" as used in the lease. The court held that the one per cent should be paid only on the difference between new car sales price and the value allowed for the old car on the trade-in. The court said, l.c. 796:

"\* \* \* However, the term, as ordinarily defined

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in the books and as popularly understood, means the transfer of property for money paid or to be paid, and we think it is in this sense that the term is used in the lease with which we are here concerned. The taking of a used car in trade on the sale price of a new car is protanto an exchange or transfer of property for property, not a transfer of property for money paid or to be paid. \* \* #"

We think, therefore, that the trade-in transaction, under the Missouri law, is an exchange and not a sale. Since the authority to sell does not include the authority to exchange, (Tiffany on Sales, page 12) the statute authorizing the State Purchasing Agent to sell goods would not give him authority to exchange goods. There is thus no authority express or implied from the wording of the statutes, which gives the agent the authority to enter into a trade-in or exchange transaction, and such authority cannot be read into the statute. State vs. Allen, supra; Sayles vs. K. C. Structural Steel Co. supra.

Section 14595, supra, provides that the agent shall sell property subject to the same provision as for bids for purchases, which provisions are set out in section 14591, supra. The latter section, relating to the advertisement for bids, the notices necessary, and other details, must be complied with when the State Purchasing Agent sells any property. The Legislature has undertaken to prescribe the manner in which the State Purchasing Agent shall purchase and sell property. Having thus prescribed, it has made clear their intent that purchases and sales shall be made only in the manner prescribed.

Section 14595 must be read with section 14591, since the two are in *pari materia* relating to the same subject matter. Considered together we think the statutes reveal the intent of the Legislature to authorize only purchases and sales and not exchanges. Any other interpretation would render useless and of no effect the provisions of section 14591 requiring bids to be made and the property purchased or sold on the basis of such bids, since in most instances at least, this procedure could not be followed in a trade-in or exchange transaction.

#### CONCLUSION

It is, therefore, the opinion of this department that the

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State Purchasing Agent is not authorized to exchange used property of the State and receive a reduction in the purchase price of new property, and that the State Purchasing Agent must comply with section 14591, R. S. Mo., 1939, when he disposes of used property.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

SNC:smw

APPROVED:

J. E. TAYLOR  
Attorney General