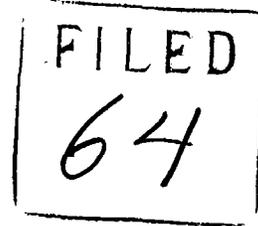


DIVISION OF PROCUREMENT:

Purchases of paper from State Paper
Procurement Revolving Fund.

June 18, 1947



Mr. M. E. Morris, Director
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date, requesting an official opinion of this office, and reading as follows:

"House Bill 172, enacted by the Sixty-fourth General Assembly, Section 3.161 and 3.162 of Page 11, appropriates \$25,000.00 to be set up as a state paper procurement revolving fund for the use of the State Purchasing Agent for the purpose of paper to be furnished by the State Purchasing Agent, as provided by law, and, further, appropriates from the state paper procurement revolving fund \$200,000.00.

"It is my understanding that House Bill 78, which attempted to provide for the fund mentioned herein, was not finally passed by the General Assembly.

"S.C.S.S.B. 297, Section 76 to 84, inclusive, provides for the purchase of printing, et cetera, by the State Purchasing Agent. It has been determined that it is helpful to the business of the state, in many cases, for the State Purchasing Agent to purchase paper and advertise for the printing. It is the intention of the appropriation to which reference is made to provide funds for the purchase of this paper and, further, that the departments utilizing the same shall pay for it and that the payment shall be placed in the revolving fund for the future use of the State Purchasing Agent for the same purpose.

"Will you please advise by memorandum at your early convenience if it is possible for this operation to function at this time."

Sections 3.161 and 3.162 of House Bill No. 172 of the 64th General Assembly read as follows:

"Section 3.161. There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Twenty-five Thousand Dollars (\$25,000.00) to be set up as a State Paper Procurement Revolving Fund for the use of the State Purchasing Agent, for the purchase of paper to be furnished by said State Purchasing Agent as provided by law, for the period beginning July 1, 1947 and ending June 30, 1948.

"Section 3.162. There is hereby appropriated out of the State Treasury, chargeable to the State Paper Procurement Revolving Fund, for the use of the State Purchasing Agent, for the purchase of paper for state printing, the sum of Two Hundred Thousand Dollars (\$200,000.00), or so much thereof as maybe needed during the period beginning July 1, 1947 and ending June 30, 1948."

House Bill No. 78 of the 64th General Assembly, referred to in your letter, failed of final passage. Briefly summarized, its provisions would have repealed Section 83 of Senate Committee Substitute for Senate Bill No. 297 of the 63rd General Assembly, and would have authorized the State Purchasing Agent, upon determination that it would be to the best interest of the State to do so, to enter into paper contracts for paper to be used in the public printing. The proposed bill would have also established a Paper Procurement Revolving Fund, under the administration of the State Purchasing Agent, out of which fund such paper would have been purchased. After purchase, the state-owned paper would have been furnished at cost to the various state agencies, and payment therefor out of the appropriations of such state agencies would have been deposited in the state treasury to the credit of the Paper Procurement Revolving Fund.

The mechanics of this method of handling the purchase of state paper having failed by reason of the failure of the General

Assembly to pass the enabling act, it remains to be determined whether or not existing statutes would authorize the usage of the appropriation made under Section 3.161 of House Bill No. 172 of the 64th General Assembly, quoted supra, to carry out the purposes of the legislation which failed of enactment.

Section 83 of Senate Committee Substitute for Senate Bill No. 297 of the 63rd General Assembly reads as follows:

"Section 83. The supply of paper now on hand in the office of the secretary of state shall be transferred to the purchasing division. The purchasing agent shall require state printing contractors to use such paper in the performance of printing for the state until September 1, 1946, whichever shall occur first. Thereafter, the contractor shall furnish the paper as a part of the complete printing job unless the purchasing agent shall determine that it would be to the advantage of the state to make separate contracts for the paper." (Emphasis ours.)

The emphasized portion of the statute quoted clearly authorizes the State Purchasing Agent to enter into separate contracts for paper to be used by the various departments. However, such purchases of paper, as all other purchases made for such departments, would necessarily be chargeable to the appropriations made to the several departments. It will necessarily entail sufficient available appropriations for each of such departments to make the contemplated purchases. Under the proposed plan, the State Purchasing Agent would have had at all times available to him amounts sufficient to pay for any purchases, not being dependent upon the several departmental appropriations. The expenditures from the proposed fund would have been replaced by reimbursement from the various state agencies using such paper. However, as has been pointed out heretofore, this procedure may not now be followed in the absence of statutory authority.

It might be thought that the appropriation of \$25,000.00 made under Section 3.161 of House Bill No. 172 of the 64th General Assembly might serve as an initial sum to be expended by the State Purchasing Agent, even though not subject to replacement as a revolving fund. We do not believe this to be true, as a "fund" may not be created as a part of an appropriation bill. Establishment of a "fund" amounts to a legislative act, and this may not be done in an appropriation bill. We quote

from State v. Canada, 113 S. W. (2d) 783, l. c. 790, wherein the court stated:

" * * * The proviso in the 1935 act which attempts to limit the authority of the board of curators to the payment of the difference between the tuition in Missouri and in the adjacent States is unconstitutional and void. A general statute (section 9622, R. S. 1929 (Mo. St. Ann. sec. 9622, p. 7328)) authorizes the board of curators of Lincoln University to pay the reasonable tuition fees of negro residents of Missouri for attendance at the university of any adjacent state. This statute cannot be repealed or amended except by subsequent general legislation. Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, which provides that no bill shall contain more than one subject which should be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S. W. 2d 828; State ex rel. Hueller v. Thompson, 316 Mo. 272, 289 S. W. 338. * * *"

CONCLUSION

In the premises, we are of the opinion that the mechanics of the State Paper Procurement Revolving Fund, as contemplated by the concurrent passage of House Bills Nos. 78 and 172 of the 64th General Assembly, are not operative at this time by reason of the failure of passage of House Bill No. 78.

Respectfully submitted,

APPROVED:

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