

DIVISION OF PROCUREMENT: Duties of the State Purchasing Agent,  
: with reference to contract for the  
: erection of new buildings, repair and  
: alteration of existing structures, and  
: installation of equipment.

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Honorable William L. Smith  
State Purchasing Agent  
Division of Procurement  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"I am receiving numerous requisitions from the State Teacher's Colleges, Eleemosynary and Penal institutions, for the construction of new buildings, repairing and alterations of buildings, installation of new boilers, engines and power house equipment, all on post-war funds.

"I would like to ask your opinion if the Division of Procurement, or the Purchasing Agent, is to seek bids and make the awards for such construction work, or who shall perform this duty.

"Also, please clarify Sections 71, 72 and 73 of S.C.S.S.B. No. 297, pertaining to contracts."

The Division of Procurement, of which the State Purchasing Agent acts as the head, was created as a part of an Act found Laws of Missouri, 1945, page 1428. The duties of the Division may generally be said to be those pertaining to the acquisition of materials and supplies, printing, etc., for the various departments of the State, with certain noted exceptions. None of the exceptions are pertinent to the matter now under consideration.

It is noted that your inquiry relates to three distinct types of contracts namely; 1) those for the erection of new buildings; 2) those for the alteration

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or repair of existing structures and, 3) those for the purchase of equipment, such as boilers, engines, etc. We shall consider them in the order named.

It has long been the public policy of the State of Missouri to provide for the creation of Building Commissions to contract for and supervise the erection of new buildings. In passing, we direct your attention to the various statutory enactments creating the Supreme Court Building Commission, the State Office Building Commission, the State Building Commission, and others of like nature. However, with respect to the erection of new buildings for the various state colleges, eleemosynary institutions and penal institutions, no such specific agencies have been created. It therefore, is necessary to determine whether or not such duties have devolved upon the Division of Procurement or the State Purchasing Agent.

Section 64 of the Act mentioned, supra, creating the Division of Procurement, reads as follows:

"Section 64. Shall purchase all supplies and lands and negotiate leases.--The purchasing agent shall purchase all supplies for all departments of the state, except as in this act otherwise provided. The purchasing agent 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 73 of the Act reads as follows:

"Section 73. Definition of terms.--The term 'supplies' used in this act shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except as in this act 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 act shall be

deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments."

(Underscoring ours.)

With the exception of other sections relating to the purchase of the public printing and binding, there seem to be no other portions of the Act which might be construed to relate to the subject-matter of your inquiry. It is noted that neither of the quoted sections specifically impose upon the Division of Procurement nor the State Purchasing Agent the duty to contract for the erection of new buildings. The only possible phraseology employed in either of the sections which might lead to such a conclusion is found in the underscored portion of Section 73: "supplies, materials, equipment, contractual services and any and all articles or things."

Section 655, R.S. Mo. 1939, contains certain rules relating to the construction of statutes. Among such rules is found the following:

"\* \* \* First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import; \* \* \* ."

Applying this rule to the definitions contained in Section 73, it becomes apparent that new buildings are not included within the category of items to be acquired through contract on behalf of the State or any department thereof, by the Division of Procurement or the State Purchasing Agent. This construction is borne out by reference to other sections of the Act creating that Division, notably, Sections 68, 69, 70, 71 and 72.

The term "supplies" therein has been used in the sense of referring to items of recurrent usage, and of a more or less standard nature which are to be acquired by the various departments of the State Government. Apparently, the word is not broad enough to encompass a new building.

What has been said above, with reference to contracts for the erection of new buildings, we believe, is equally applicable to contracts for the repair or alteration of existing structures.

With respect to the purchase of equipment for installation in a new building, in an altered or repaired building, or in an existing structure, we believe a different situation presents itself. You will note that the definition of the term "supplies" found in Section 73, quoted, supra, specifically includes equipment. We believe then that by the inclusion specifically of the word "equipment" it was the intent of the Legislature to require contracts therefor to be negotiated by the State Purchasing Agent for and on behalf of the departments of the State requiring the same. A reason for this might very well be in the fact that items of equipment, at least until attached to the realty, are different in their characteristics from new buildings which are in the nature of permanent improvements and are not so readily subject to standardization.

We are persuaded to this opinion by reason of the long established public policy of the State of Missouri, with respect to the erection of new buildings, as contradistinguished from the procedure with respect to the acquisition of equipment, materials and supplies of a more standardized nature.

CONCLUSION.

In the premises, we are of the opinion that no duties have been placed by law upon the Division of Procurement nor the State Purchasing Agent, with respect to the negotiation of contracts for the erection of new buildings for the various departments of the State, nor with respect to such contracts for the repair or alteration of existing structures.

We are further of the opinion that it is the duty of the State Purchasing Agent to negotiate contracts on behalf of the various departments of the State for the acquisition of items of equipment.

Respectfully submitted,

APPROVED:

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