

PURCHASING AGENT: Lease of premises for and in behalf of state  
STATE CONTRACTS: departments must be negotiated by State  
Purchasing Agent.

October 28, 1949

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Mr. Joy O. Talley, Director  
Vocational Rehabilitation Division  
Department of Education  
1 Governor Hotel  
Jefferson City, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department. In your letter you request to be informed whether or not a lease of offices in the Chamber of Commerce Building, St. Louis, Missouri, can be legally broken so as to permit your offices to move to another location. Examination of the lease, which was subsequently submitted to us upon request, shows that the premises in question were leased for a term beginning September 1, 1949, and ending August 31, 1951; that it was executed by one Arthur A. Lagemann as lessor and State of Missouri, Vocational Rehabilitation Division, Department of Education as lessee. The lease was signed by you for and in behalf of the lessee.

It is a requirement of the law of this state that all leases for state departments must be negotiated by the State Purchasing Agent. Thus, Section 64, page 1450, Laws of Missouri, 1945, provides:

"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."

The above section is almost identical with the old Section 14590, R.S.Mo. 1939, which was a part of the State Purchasing Agent Act that was repealed by the 63rd General Assembly with the enactment of Senate Bill No. 450.

In referring to the State Purchasing Agent Act, and particularly Section 14590 thereof, the Supreme Court of

Missouri, in the case of State ex rel. Armontrout vs. Smith, 182 S.W. (2d) 571, 353 Mo. 486, said at S.W. l.c. 574:

"\* \* \* The State Purchasing Agent Act (Secs. 14590, 14592) also requires purchases of supplies (as well as leases) for all departments to be made through the purchasing agent. \* \* \*"

It is therefore apparent that the lease contract in question was not executed by the lessee, which is a department of our state government, with statutory authority and, consequently, the contract is null and void and not binding upon the state. To permit its enforcement would be in violation of the statute.

In the case of Sager vs. State Highway Commission, 160 S.W. (2d) 757, 349 Mo. 341, action was instituted by the plaintiff, a contractor, to recover additional compensation for extra work performed under a contract that had been orally changed by assistant engineers in the State Highway Department. In holding that there was no liability under any agreement or contract made by the assistant engineers, the court, at S.W. l.c. 763, said:

"\* \* \* Plaintiff now attempts to obtain payment upon a different basis on an oral agreement by assistant engineers (about which the evidence is very indefinite and uncertain) to set aside the applicable provisions of the contract. Therefore, this is not a case of mere irregular or defective exercise of authority possessed, but is a case of no authority whatever for such assistants to change the terms of the written contract by oral agreements. See Campbell Building Co. v. State Road Commission, 95 Utah 242, 70 P. 2d 857, loc. cit. 864. To permit this to be done would be to sanction the violation of the statutory and constitutional provisions to which we have hereinabove referred; and since the assistant engineers had no authority to make such a contract, it cannot be enforced by estoppel. \* \* \*"

Again, in the case of AETna Ins. Co. vs. O'Malley, 124 S.W. (2d) 1164, 343 Mo. 1232, the Supreme Court, in discussing the power of a state officer to enter into valid contracts, said at S.W. l.c. 1166, 1167:

"\* \* \* Before a state officer can enter into a valid contract he must be given that power either by the Constitution or by the statutes. All persons dealing with such officers are charged with knowledge of the extent of their authority and are bound, at their peril, to ascertain whether the contemplated contract is within the power conferred. Such power must be exercised in manner and form as directed by the Legislature. State v. Bank of the State of Missouri, 45 Mo. 528; State to the Use of Public Schools, etc., v. Crumb, 157 Mo. 545, 57 S.W. 1030; State ex rel. Blakeman v. Hays, 52 Mo. 578; State v. Perlstein, Tex. Civ. App., 79 S.W. 2d 143; 59 C.J., section 285, page 172, section 286. In the last citation the author says: 'Public officers have and can exercise only such powers as are conferred on them by law, and a state is not bound by contracts made in its behalf by its officers or agents without previous authority conferred by statute or the constitution, unless such authorized contracts have been afterward ratified by the legislature. An agreement not legally binding on the state may, however, impose a moral obligation. The doctrine of estoppel, when invoked against the state, has only a limited application, even when an unauthorized contract on its behalf has been performed, and thereby the state has received a benefit, and so it is held that a state cannot by estoppel become bound by the unauthorized contracts of its officers; nor is a state bound by an implied contract made by a state officer where such officer had no authority to make an express one.'"

Under the holding of the above case, we are constrained to the view that the contract in question not being executed in the manner and form as directed by the Legislature, but was executed without authority that the state is not expressly nor impliedly bound. It would therefore follow that the local office of the Division of Vocational Rehabilitation, Department of Education, could move to another location without incurring any liability on the state under the terms of the lease contract.

Mr. Joy O. Talley

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CONCLUSION

In the premises, it is our opinion that a lease of premises executed by the Division of Vocational Rehabilitation, Department of Education, State of Missouri, or any officer connected therewith as lessee, is not binding upon the state for such leases are required by law to be negotiated by the State Purchasing Agent.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General