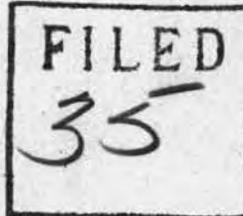


ARMORIES:
ADJUTANT GENERAL:

Purchase of armory for which money was appropriated to Adjutant General to be made by State Purchasing Agent.

February 18, 1950

2/21/50



Mr. R. L. Groves
Fiscal Officer
Adjutant General's Office
Jefferson City, Missouri

Dear Mr. Groves:

This will acknowledge receipt of your recent opinion request which reads as follows:

"This office has been appropriated out of the State Treasury, chargeable to Postwar Reserve Fund; the sum of Seventy-Five Thousand Dollars (\$75,000.00) for the use of the Adjutant General for the purpose of purchasing lot and buildings, and for the remodeling and equipping of buildings to be used as an armory for the National Guard troops at 1701-1703 East Eighteenth Street, Kansas City, Missouri. Please refer to House Bill No. 436, Section 9.570.

"It is respectfully requested that this office be advised as to the proper procedure to consummate this purchase."

Section 9.570 of House Bill 436, recently passed by the 65th General Assembly, reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the Postwar Reserve Fund, the sum of Seventy-five Thousand Dollars (\$75,000.00) for the use of the Adjutant General for the purpose of purchasing lot and buildings and for the remodeling and equipping of buildings to be used as an armory for National Guard Troops at 1701-1703 East Eighteenth Street, Kansas City, Missouri, legally described as:

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"All of Lot Twenty-five (25), Block Three (3), William Tom's Addition, an addition in Kansas City, Jackson County, Missouri, including the building thereon"

for the period beginning July 1, 1949 and ending June 30, 1951."

The first question to be determined is whether or not the Adjutant General has the authority to purchase real estate to be used as an armory. There is no statute which specifically gives the Adjutant General, or any other officer or department, the authority to purchase or lease an armory.

Section 46 of Article III, Constitution of Missouri 1945, provides:

"The general assembly shall provide for the organization, equipment, regulations and functions of an adequate militia * * *."

Section 15063, R. S. Mo. 1939, provides:

"All armories owned by this state or by any organization of the national guard * * * shall be exempt from taxation for all purposes during the period of such ownership."

Section 15064, R. S. Mo. 1939, provides:

" * * * the officer in charge of any armory owned or leased by the state may permit the use of such armory for the meeting of such veteran societies without charge on dates when the same is not in use for military purposes."

Section 15067, R. S. Mo. 1939, provides:

"Every organization of the national guard of Missouri shall be provided by the state with such arms, uniforms and equipments, camp and garrison equipage as may be necessary for the proper training and instruction of the force and for the proper performance of duty required by this chapter."

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The above statutes recognize that the armories may be owned or leased by the state. The case of State ex rel. v. Fleming, 275 Mo. 509, 204 S.W. 1085, recognizes the right of the state to lease an armory. From the foregoing, we are of the opinion that there is an implied authorization for the purchase under discussion. However, the appropriation in question is given to the Adjutant General. Is he a proper party to whom this appropriation may be given?

Section 15016, R. S. Mo. 1939, provides that there shall be an Adjutant General of the state and also provides that:

"The adjutant-general shall, if required by the governor, be the custodian of all property purchased for, allotted or issued to the military forces of this state and keep a correct account of the same."

As a matter of fact, the Adjutant General has been and is at present acting and recognized as such custodian of property purchased for, allotted or issued to the state military forces.

Section 15017, R. S. Mo. 1939, provides:

"There shall be a military council, to consist of the commanding general of the national guard, the adjutant-general of the state, the commanding officers of regiments of the national guard, the commanding officers of the organized regiments of the reserve military forces of the state, and the commanding officer of special troops. The commanding general shall be the president of the council, which council, except as herein otherwise provided, shall sustain the same relation to the military forces of the state and the governor as the general staff of the army sustains to the United States army and the president. The military council shall formulate plans for the organization, instruction, equipment and maintenance of the military forces of the state, provide for encampment and all other field and armory instruction and make allotments of funds and supplies appropriated or furnished for the support, equipment and maintenance of the military forces of the state. All appropriations made for military

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purposes shall be appropriated and expended by the council. Vouchers and accounts covering the expenditure of funds and appropriations for the support of such forces shall be audited and paid only when fully itemized, certified and approved by the president of the council."

Section 15037, R. S. Mo. 1939, provides:

"There shall be a commanding general of the national guard with the rank of brigadier-general who shall command the same and who shall be responsible only to the governor for its drill, equipment, instruction, inspection, service, movements, operations and general efficiency. His office shall be the office of administration and his headquarters the headquarters of the national guard."

The present Adjutant General is also acting in the capacity of Commanding General of the National Guard as has been the practice in recent years. This practice has been held valid in an official opinion of this Department, addressed to the Honorable Forrest Smith, State Auditor, under date of February 23, 1938.

Therefore, the statutes recognize that there may be state owned armories. The Adjutant General is the custodian of all property purchased for the military posts. He also serves as Commanding General of the National Guard and as president of the military council. In these capacities he is charged with the administration of the National Guard and must certify and approve the expenditure of funds and appropriations for the support of the military forces. In view of this, we are of the opinion that there is implied authority to purchase real estate to be used as an armory, and also that the Adjutant General is a proper party to whom the use of funds may be appropriated by the legislature to make such purchase.

Section 64 of an Act passed by the 63rd General Assembly, Laws of Missouri 1945, page 1450, provides that:

"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

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to acquire lands from the constitution of the state."

In the case of White v. Jones, 177 S.W. (2d) 603, 352 Mo. 354, the state purchasing agent, in his official capacity, was sued for breach of a lease agreement executed by his predecessor in office. The court, at l.c. 605, stated:

"Section 14590, R. S. 1939, Mo. R. S. A., Sec. 14590, provides that the state 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.' We think it apparent that, in executing the lease, the state purchasing agent acts not only as a state officer, but for and on behalf of the state department or agency for whom the lease is made. In this case, in executing the lease, he acted with and on behalf of the Board of managers of the State Eleemosynary Institutions. It is further apparent from Chapter 105, supra, that the state purchasing agent has no funds out of which such lease rentals may be paid, but that all rentals are to be paid from the appropriations of the departments for whom the leases are executed.
* * *"

Therefore, since the Adjutant General has no constitutional power to acquire lands, Section 64, supra, is applicable. He will be required to requisition the State Purchasing Agent to make this purchase. In so doing, the State Purchasing Agent will be acting for and in behalf of the Adjutant General, the funds to be provided out of the appropriation made to the Adjutant General for this purchase.

CONCLUSION

It is therefore the opinion of this department that the State Purchasing Agent is the proper party to purchase the lot and buildings for which money was appropriated by the 65th General Assembly

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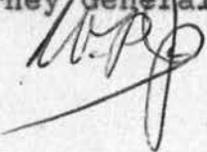
in House Bill 436, Section 9.570, for the use of the Adjutant
General for the purpose of purchasing said lot and buildings.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



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