

ADJUTANT GENERAL: ) Adjutant General authorized to accept moneys  
ARMORIES: ) from the Federal Government to construct  
APPROPRIATIONS: ) armories, providing the construction is  
FUNDS: ) accomplished by compliance with state laws  
 ) relating to public works.

March 15, 1952

3-19-52

Major General A. D. Sheppard  
The Adjutant General  
State of Missouri  
Jefferson City, Missouri



Dear General Sheppard:

This is in reply to your request for an opinion, which we will restate for the purpose of brevity.

By Public Law 783 (National Defense Facilities Act of 1950) Congress has provided for contributions to states of funds for the acquisition, construction, expansion, rehabilitation or conversion by the states of additional facilities made necessary by an increase in strength of the National Guard of the United States or the Air National Guard of the United States.

The National Guard Bureau has prepared a Master Agreement to cover all funds contributed to the states for constructions under the provisions of Public Law 783. This master agreement provides that engineering and construction work may be performed by the state, and the state is empowered to enter into and administer appropriate contracts for such construction as may be authorized under the agreement. The contract provides that the state is to execute construction or supply contracts under regulations, procedures and policies in current use by the Government insofar as these do not conflict with requirements of State law. The contract

Major General A. D. Sheppard

further provides that the agreement is to remain in full force and effect for a period of twenty-five (25) years from date of acceptance by the state and government of each facility constructed hereunder, which period is agreed to be the approximate lifetime of the facility. The state agrees to maintain and preserve all facilities in a state of good repair at its own expense and agrees to make no disposition or use of such facilities which will interfere with its use by the Reserve Forces of the United States. An opinion is requested as to whether or not under state law moneys appropriated for the construction of state armories may be expended in collaboration with the Federal Government in contractual procedures as outlined in the Master Agreement, particularly in view of the provisions which have been specifically set out in this request, or must there be enabling legislation specifically authorizing the joint contracts.

The authority for the construction of armories in this state has been vested in the Adjutant General by House Bill No. 133, Laws of Missouri, 1951, (V.A.M.S., Section 41.200 (13)), which is as follows:

"13. He shall have control of all armories that are owned, erected, purchased, leased or provided by the state. The adjutant general, in the name of the state of Missouri, may acquire by purchase and may receive by donation or dedication any property which may be used for military purposes. For the control and management of armories described in this section, the adjutant general may establish

Major General A. D. Sheppard

armory boards, the personnel of which shall serve without pay. Such boards, subject to the direction of the adjutant general, shall control, manage and supervise all activities in such armories and may rent such armories to persons or organizations not connected with the organized militia."

There are statutes generally providing for the method of letting construction contracts by the state and certain political subdivisions. Section 8.250, RSMo 1949, provides for advertising for bids for construction projects, and Sections 8.260 and 8.270 provide for the methods of payments of the amounts due for the construction work. Section 8.280 provides that Missouri products shall be used in construction or repair of public buildings under stated circumstances. Section 107.170 provides that contractors for public works must furnish a bond conditioned upon the performance of the work and further conditioned upon the payment of certain claims.

It is, of course, the duty of the Adjutant General to follow the statutes directing the manner and method of letting contracts for public works. These statutes have been enacted for the protection of the public and must be followed in order to justify the expenditure of public moneys. It is to be noted that Section 41.200 (13) provides that the Adjutant General may receive by donation or dedication any property which may be used for military purposes. This is a general grant of power, and in connection therewith it is to be noted that property includes real and personal property (Section 1.020, (11), RSMo 1949). Therefore, it would appear that the Adjutant General has been given the authority to receive moneys for military purposes. We do not believe it can be questioned but that the construction of facilities for the use of the military is for military purposes.

We further note that the Master Agreement provides that the engineering and construction work may be contracted for by the state, and the requirements of the state law may

Major General A. D. Sheppard

be met. Under these conditions we believe that the Adjutant General is authorized to enter into such agreements for the construction of facilities to be used for military purposes under present law and no enabling legislation (except, of course, an appropriation therefor) is necessary.

However, it should be emphasized that the Adjutant General must comply with the state procedures for the letting of the contracts, and no agreement which he may enter into may in any way interfere with this duty to follow the requirements of a state law.

However, we do find that the provision concerning the period of the agreement and the obligation of the state to maintain and preserve the facilities constructed under the agreement are not authorized under state law. The Adjutant General has been given no authority to enter into an agreement for such a length of time, and in any event such an agreement is necessarily subject to the action of future legislators in appropriating money to carry out the agreement. We note, however, that Article VI of the Master Agreement provides for alterations of the provisions of the agreement and believe that the deletion of the objectionable clauses may be acceptable to the contracting authority of the United States Government. In this connection we are unable to find any provision in Public Law 783 which makes such a requirement, and few state legislatures would be authorized to enter into such agreement inasmuch as legislatures generally may not restrict or limit the power of its successors (12 C.J., page 806).

#### CONCLUSION

Therefore, it is the opinion of this department that enabling legislation is not necessary to permit the Adjutant General to accept public funds for the purpose of constructing

Major General A. D. Sheppard

armories when the conditions attached to the grants are such as to enable the Adjutant General to follow applicable state laws concerning the construction of public works.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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