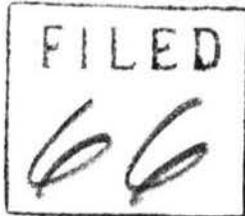


STATE PURCHASING AGENT:

Duty of the State Purchasing Agent to approve departmental direct purchase orders.

May 26, 1953



Honorable Edgar C. Nelson
State Purchasing Agent
Division of Procurement
Jefferson City, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads in part as follows:

"I would like your department to give me an opinion on the following: * * * The Business Manager of the Missouri State Penitentiary, has sent to this office twenty-two 'Departmental Direct Orders' totalling \$8011.66.

"I have been advised that these orders originated in the office of * * * * Penitentiary Engineer, who says that he was given oral permission to write such orders by * * *, my predecessor in this department. All of these orders are marked 'emergency orders.' A cursory examination of the individual orders would not indicate to me that many of them fall within that definition.

"Please advise me whether or not I should approve these orders. In no case has the total amount of the order been encumbered by the Comptroller.

Honorable Edgar C. Nelson

"More specifically, please advise me if I should approve only these orders which appear clearly to be emergency orders, and should not approve other orders which do not fall within that classification."

The provisions relating to the purchase of supplies for all departments of the State and the duties of the State Purchasing Agent in this regard are contained in Chapter 34, RSMo 1949. Section 34.030 provides that all purchases shall be made by the State Purchasing Agent except as otherwise provided in this chapter and reads as follows:

"The purchasing agent shall purchase all supplies for all departments of the state, except as in this chapter 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 exception to the above noted provision is contained in Section 34.100, RSMo 1949, and relates to purchases of an emergency or technical nature. This section specifically provides:

"The purchasing agent shall have power to authorize any department to purchase direct any supplies of a technical nature which in his judgment can best be purchased direct by such department. He shall also have power to authorize emergency purchases direct by any department. He shall prescribe rules under which such direct purchases shall be made. All such direct purchases shall be reported immediately to the purchasing agent together with all bids received and prices paid."

Under this provision the purchasing agent is empowered to authorize any department of the State to purchase direct supplies of a technical nature. Likewise, he is empowered and may authorize emergency purchases direct by any department. Such authority may be conferred in these instances as in the sound discretion and judgment of the State Purchasing Agent will promote the interests of efficiency, economy, the preservation of life and property and the welfare of the State in general. This section further provides that the Purchasing Agent shall prescribe rules under which such direct purchases shall be made. Under this mandate certain rules

Honorable Edgar C. Nelson

have been prescribed which we here make reference. Rules 13, 14, 15 and 16 as formulated by the Division of Procurement provide as follows:

"Rule 13. Purchases amounting to \$50.00 or less shall be construed to be emergency purchases, and the securing of competitive bids, although recommended in cases wherever possible, will not be required. Such purchases shall be made only upon authorization of the departmental head. Departmental Direct Orders are to be sent immediately direct to the Comptroller for an encumbrance on the appropriation. If immediate delivery has been made, departments are to write on the order: 'This merely confirms a purchase previously made.'

"Rule 14. If in the opinion of the Purchasing Agent it is advantageous to the state for a department to purchase supplies of a technical nature direct, the department, after obtaining permission to make such a purchase, shall secure at least three competitive bids, writing up an order on the lowest and best bidder, using departmental direct order blank, checking this order in the upper left-hand corner in the space designated for such an order and attach all bids thereto. If approved, copy No. 1 will be mailed to vendor, copy 2 and the bid submitted will be retained in the office of the State Purchasing Agent and copies 3, 4 and 5 returned to the department, and the last copy will be retained by the Comptroller. The departmental direct order shall also be used for purchases or supplies or services obtainable only from one source of supply and which amounts to over \$50.00. These orders, too, must have the approval of the Purchasing Agent before being placed.

"Rule 15. In cases where human life or state property is in immediate jeopardy, emergency orders or any orders amounting to more than \$50.00 will be permitted without first securing special authorization from the State Purchasing Agent.

Honorable Edgar C. Nelson

"Rule 16. Departments may make purchases of emergency or technical nature, where immediate delivery is necessary, with the verbal permission of the Purchasing Agent. Vendors can be notified of such approval and make immediate delivery, and instructed not to make billing until departmental order is received. Departmental orders are to be made up at once and sent to Purchasing Agent for approval and encumbrance on the appropriation. Departments are to write on such order: 'This merely confirms a purchase previously made' (to avoid duplication)."

The import of these rules as we are here concerned seems to be that in cases where human life or state property is in immediate jeopardy, emergency orders or any order amounting to more than \$50.00 will be permitted without prior authorization from the State Purchasing Agent, Rule 15, and where the need is not so imperative, yet immediate delivery is necessary, a department may make purchases of emergency or technical nature on verbal permission of the Purchasing Agent, Rule 16. That these provisions are mandatory, there can be no doubt, for Section 34.150, provides that if supplies are purchased contrary thereto, the department head shall be personally liable. This section provides:

"Whenever any department or agency of the state government shall purchase or contract for any supplies, materials, equipment or contractual services contrary to the provisions of this chapter or the rules and regulations made thereunder, such order or contract shall be void and of no effect. The head of such department or agency shall be personally liable for the costs of such order or contract and, if already paid for out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor."

As we view the statutory provisions noted and the regulations adopted thereunder, we believe that it is mandatory that all purchases of supplies must be negotiated by the State Purchasing Agent except purchases of emergency or technical nature or the purchase of supplies obtainable from only one source which may be made by the department under the procedure prescribed. It appears to be clear that the State Purchasing Agent has no duty to approve

Honorable Edgar C. Nelson

purchase orders negotiated by any department which does not fall within the exceptions provided. Whether or not a purchase amounting to more than \$50.00 is an emergency purchase, is of course, a question of fact depending upon the circumstances, while by Departmental Regulation 13, supra, all purchases amounting to \$50.00 and less shall be construed to be emergency purchases.

We note from your request that it is contended that the purchase orders to which you refer were placed after securing verbal permission of the purchasing agent then in office. If, in fact, verbal permission was given, then we are of the opinion that your office should approve those orders of \$50.00 or less, and likewise, approve those orders of more than \$50.00 which were of an emergency or technical nature and that purchases not meeting these requirements need not be approved. More specifically in regard to your duty to approve orders placed on the verbal permission of your predecessor in office, we wish to call your attention to the fact that it is presumed that a public official discharges his duties or performs an act in accordance with the law, and the authority conferred upon him. This rule is stated in 31 C. J. S., Evidence, Section 146, Page 800, as follows:

"Stated in another way, it is, as a general rule, presumed that a public official properly and regularly discharges his duties, or performs acts required by law, in accordance with the law and the authority conferred on him, and that he will not do any act contrary to his official duty or omit to do anything which such duty may require.

"In accordance with the general rule, it is to be presumed that everything done by an officer in connection with the performance of an official act in the line of his duty was legally done,
* * *."

See also Woolridge v. LaCrosse Lumber Company, 236 S.W. 294.

With this rule in mind it is our opinion that your office should approve those direct purchase orders placed upon the verbal permission of your predecessor, absent illegality appearing on the face thereof, since there exists a presumption that they were properly authorized and placed in accordance and compliance with the law.

Honorable Edgar C. Nelson

CONCLUSION

Therefore in the premises, it is the opinion of this office that the State Purchasing Agent now in office is required to approve departmental direct purchase orders placed upon the verbal permission of his predecessor in office and involving purchases of an emergency or technical nature where immediate delivery was necessary.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

DDG:hr