

STATE PURCHASING AGENT:
DIRECTOR OF PUBLIC BUILDINGS:

Contracts for labor and materials involved in the construction of appurtenances to buildings which involve engineering or mechanical skills should receive the approval of the director of public buildings.

December 14, 1954



Mr. Edgar C. Nelson
State Purchasing Agent
Capitol Building
Jefferson City, Missouri

Dear Sir:

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

"Will you please give me an opinion that will clarify the jurisdiction of this division on orders that fall in the category 'borderline cases' so far as this division and the office of Superintendent of Public Buildings is concerned.

"For example, I have before me two departmental direct orders from the State Federal Soldiers' Home, one in the sum of \$52.50 and calling for the payment of 35 hours of bricklaying for manholes for new sewer; the other, in the sum of \$96 is in payment for use of a compressor for eight hours, drill bits, steel bit, dynamite, blasting caps and fuses.

"* * * A similar case involved the grading of a parking lot at the State Sanatorium at Mt. Vernon, * * *."

You inquire whether certain stated projects and similar transactions fall within the duties of the state purchasing agent or the director of public buildings. It appears that in one instance certain bills for labor and materials were

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contracted in connection with the installation of a sewer line at the state Federal Soldiers' Home, and that in the other, certain bills for labor were contracted in connection with the building of a parking lot at the State Sanatorium at Mt. Vernon, Missouri. We will note briefly the duties of the state purchasing agent and the director of public buildings, so far as they are here pertinent. Section 34.020 provides for the appointment by the Governor of a state purchasing agent. Section 34.030 provides that the purchasing agent shall purchase all supplies for all departments of the state and shall negotiate all leases and purchase all land except for such departments as derive such authority from the Constitution. Said section more fully provides:

"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."

Section 34.010 defines the terms "supplies" and "contractual services" as follows:

"1. The term 'supplies' used in this chapter shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except as in this chapter otherwise provided.

"2. 'Contractual services' shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service. * * *"

Section 8.020 provides for the appointment by the Board of Public Buildings of a director of public buildings who shall be qualified by training and experience to deal with construction, operation, maintenance and repair of buildings and shall be of recognized competence in the field of building administration. Said section more fully provides in part as follows:

"The board of public buildings shall appoint a director of public buildings who shall be qualified by training and experience to deal

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with construction, operation, maintenance and repair of buildings, and shall be of recognized competence in the field of building administration. * * *"

Section 8.070 provides that the director shall serve as advisor and consultant to all department heads in letting contracts, supervising construction, inspection and maintenance of buildings, etc., and further provides that no contract shall be let for repairs, rehabilitation or construction of buildings without the approval of the director, and that no claim for such matters shall be paid without the approval of the director. Section 8.070 reads:

"The director shall serve as an advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation, or construction of buildings, without approval of the director, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director; * * *"

Section 8.080 provides that the director shall promulgate conditions and procedures to be followed in the repair, maintenance, operation, construction and administration of state buildings, and Section 8.050 provides that the director shall formulate and recommend a current and long range repair, construction and rehabilitation program.

While the above-noted statutes relating to the duties of the director of public buildings deal with "buildings" which would seem at first reading to preclude projects such as are here under consideration, we do not believe that the duties of said officer should be so limited. In the case of *Swasey v. Shasta County*, 74 P. 1031, decided by the Supreme Court of California, an action was brought to prohibit the county supervisor from entering into a contract for the construction of an iron fence around the grounds upon which the courthouse was situated. The California statutes conferred upon said supervisor the authority to provide a courthouse, jail, hospital, "and such other buildings as may be necessary." The statute above mentioned contained other provisions relating to the advertisement for bids, letting of contracts, etc., substantially like our law relating to the duties of the director of public buildings. The contention was made that the supervisors had no

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authority to enter into such a contract, since the term "such other buildings" did not include fences. In reference to the term "building," as used, the court said:

" * * * There is no well-established legal definition of the word 'building' which absolutely and under all circumstances either includes or excludes a 'fence.' The question greatly depends upon the connection in which the word 'building' is used, and the evident purpose of the statute or contract in which it is found. In 1 Bouvier's Law Dictionary (Rawle's Ed.) p. 269, 'Building' is defined as follows: 'An edifice erected by art, and fixed upon or over the soil, composed of stone, brick, marble, wood or other proper substance, connected together, and designed for use in the position in which it is so fixed.' This is about as good a general definition of the word as can be found in the books, and it undoubtedly includes, in terms, an ordinary fence. * * *"

Under the above-noted rule, which we deem to be a correct statement of the law, we must keep in mind the duties and qualifications of the director of public buildings as above noted. Both of the projects which are the subject of this opinion, i.e., the sewer line and parking area, are connected either directly or by intended use to a structural building, and is either an integral part or an appurtenance thereto. If there were no other factors, we would deem this sufficient to require the approval of a director of public buildings, but aside from such factors we wish to note that each of these projects involves, in our opinion, some construction, mechanical or engineering skills. Noting also that under the provisions of Section 8.020 supra the director of public buildings is required to be "qualified to deal with construction", we are of the opinion that such matters as are here under consideration are intended to come within the duties and responsibilities of the director of public buildings.

Further, and in support of such conclusion, we again turn to the duties of the state purchasing agent. He is required to purchase all supplies, except as in this chapter otherwise provided. The term "supplies" is defined in 34.010, noted supra, to be supplies, materials, equipment, contractual services, etc. The term "contractual services" is defined as including telephone, telegraph, postal, electric light and power service, and water, towel, and soap service. The contracts here under consideration involve principally labor. Surely such could not be deemed to be included in the terms "material,

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equipment or supplies" as those terms are commonly understood. We are further of the opinion that labor cannot fall within the term "contractual services" as the term is used in the Purchasing Agent Act, in view of the well-known canon of statutory construction that the expression of one thing or class of things is the exclusion of another: Expressio unius est exclusio alterius. Keane v. Strodtman, 18 S.W. 2d 896. The class of services included in the term "contractual services" would appear to exclude contracts for labor. If the term "contractual services" was given a broader meaning than that stated, it would include services (labor) to be performed under a contract for the construction of an office building, which clearly falls within the duties of the director of public buildings.

CONCLUSION

Therefore, it is the opinion of this office that contracts for labor and materials in connection with the construction of a sewer line at the state Federal Soldiers' Home, and contracts for labor in connection with the grading of parking lot at the State Sanatorium should receive the approval of the director of public buildings, since both projects constitute appurtenances to buildings and involve to some degree engineering or mechanical skills peculiarly within the knowledge of said director.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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