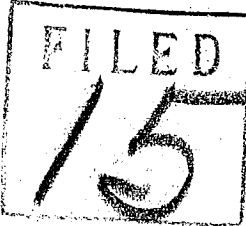


STATE PURCHASING AGENT:
MOTOR VEHICLES:

Where a successful bidder contracts with the state to supply new automobiles and agrees to accept as part payment of the purchase price automobiles currently being used by the state the depreciation occasioned by the use of said automobiles in the ordinary course of business should be borne by the bidder.



December 19, 1955

Honorable L. G. Carpenter
Commissioner of Agriculture
Jefferson City, Missouri

Dear Sir:

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

"We are faced with a problem of making a determination as to what is fair and honest in connection with a car trade which was made this summer in the Grain Warehouse Division.

"Requests for bids were mailed out by Mr. Nelson on June 10, 1955, and were opened by Mr. Nelson on June 22, 1955, at which time the Bernard Motors Inc. at Lexington, Missouri, was awarded the bid with the understanding that delivery was to be made within ten days. The vehicles being traded in were in constant daily service as it was necessary that they be used in connection with the official grain inspection work.

"Mr. Bernard contends that one of the cars was subjected to abuse and damage between the time that he looked at the car and the time that he was able to deliver the new vehicle and take the old car in exchange. It is entirely possible that in the normal use that there was some further depreciation as some 6 weeks expired between the time the bids were mailed out and the actual completion of the transaction.

"The amount of money involved, of course, is rather insignificant; however, it comes to my mind that there is some question as to the legality of our paying a

Hon. L. C. Carpenter

repair bill on a vehicle on which we no longer hold title. Again may I say that we want to be fair and honest and treat everyone in the manner in which we would want to be treated ourselves. Therefore, we are leaving this determination to you as to the legality and the state's responsibility in this matter."

We understand the facts to be as follows: The Grain Warehouse Division desired to obtain new automobiles to replace those owned and operated by the Division. The State Purchasing Agent secured bids for the purchase of new automobiles to be financed in part by a transfer of certain vehicles operated by the Division. The successful bidder was awarded the contract with the understanding that delivery was to be made within ten days. Actually, some six weeks expired between the time the bids were mailed out and the time delivery was, in fact, made.

You further state that the vehicles owned by the state, and which were transferred to the seller on delivery of the new automobiles, were in constant daily use by the Division. You then inquire whether depreciation or damages occurring in such use should be borne by the state.

The facts outlined above constitute a contract of sale which contract would, of course, be governed by the terms thereof. It may be assumed, for the purpose of this discussion, that the successful bidder (seller) must have known that the vehicles owned by the state would be used in the normal course of business pending delivery of the new vehicles and, therefore, would be presumed to have agreed to accept such vehicles, subject to the usual depreciation occasioned by such use. What would constitute usual depreciation under the particular facts would, of course, be a question of fact upon which we cannot express an opinion.

Of course, if said vehicles sustained abuse and damage other than depreciation in their normal use it might be so great as to prevent the state from fulfilling the terms of the contract. In such event it would appear that the state should, in all fairness, bear such loss. This result would, as above stated, depend upon the particular facts involved and resort must be had thereto.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that where a successful bidder contracts with the state to supply

Hon. L. C. Carpenter

new automobiles, and agrees to accept as part payment of the purchase price automobiles currently being used by the state, the depreciation occasioned by the use of said automobiles in the ordinary course of business should be borne by the bidder.

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

Yours very truly,

John M. Dalton
Attorney General

DDG:mw