

PURCHASING AGENT:  
STATE HIGHWAY COMMISSION:  
STATE PARK BOARD:  
STATE CONSERVATION COMMISSION:

1. The State Purchasing Agent Law does not apply to purchases made by the University of Missouri.

2. The State Purchasing Agent Law applies to purchases made by departments including state colleges from non-appropriated funds.

3. The State Purchasing Agent Law does not apply to purchases made by a department under statutes now in effect or which may be enacted in the future giving a department specific authority to contract or purchase directly from a seller.

4. The State Purchasing Agent Law does not apply to leases or purchases of land by the State Conservation Commission, the State Highway Commission or the State Park Board.

NOTE: This opinion is amended by Op. No. 125, 1974.  
Such opinion must be sent with copies of this opinion.

WITHDRAWN



OPINION NO. 82

October 9, 1968

Honorable E. J. Cantrell  
State Representative - District 33  
Missouri House of Representatives  
St. Louis County  
Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Cantrell:

This is in answer to your recent opinion request which reads as follows:

"1. Does the State Purchasing Act (Chapter 34) apply to purchases by state departments and agencies (including state colleges) from funds derived from sources other than funds appropriated by the Legislature (such as funds derived from student fees)?

"2. Does the State Purchasing Act (Chapter 34) apply to all purchases by constitutional agencies such as the Highway Commission, Conservation Commission, University of Missouri, etc.?

"3. Do the constitutional agencies such as the ones referred to above have authority to establish purchasing offices independent and separate

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from the State Purchasing Agent and if so, what statutes apply to establish and regulate such procedures?"

Your first question is whether the State Purchasing Act applies to state colleges insofar as non-appropriated funds are concerned.

Section 34.010 (3) RSMo., provides as follows:

"3. The term 'department' as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments."

Obviously a state college is not a part of the legislative or judicial departments and is therefore within the definition of "department" as used in Section 34.010.

It is our view that the State Purchasing Act does apply to purchases by the state colleges including purchases from funds not appropriated by the General Assembly.

On December 6, 1933, an official opinion was rendered to Honorable George C. Johnson, by the Attorney General holding that the State Purchasing Act was inapplicable to purchases made from funds not appropriated by the Legislature.

An opinion rendered under date of January 19, 1934, to W. W. Parker held that the State Purchasing Act was inapplicable to non-appropriated funds of state colleges.

The holdings in both of these opinions were based upon the provisions found in Section 4 of the State Purchasing Agent Act, Laws of Missouri, 1933, Page 410. Such Section provided that the Purchasing Agent should not furnish supplies to any department without first securing a certification from the State Auditor that an unencumbered balance remained in the appropriation to which the purchase was to be charged. Relying on such provision, the opinions held that the State Purchasing Agent had no authority to make purchases for state departments including state colleges from funds not appropriated by the Legislature.

Section 4 of the State Purchasing Agent Act was repealed, Laws of Missouri, 1943, Page 1004, and Section 14592 enacted in lieu thereof, such Section providing that the Purchasing Agent should not furnish supplies to any department without first securing a certification from an official of the department that an unencumbered balance remained in the appropriation to which the purchase was to be charged.

The 1933 and 1934 opinions, of course, were unchanged by the amendment to such statute because the certification though made by a department official instead of the Auditor, could apply only to appropriated funds.

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However Section 14592, Laws 1943, Page 1004, was repealed by Laws 1945, Pages 1420 and 1421, and there is now no requirement that the Purchasing Agent secure the certification of any officer that there are unexpended funds in an appropriation before making purchases for a department.

Section 34.030 RSMo, provides 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."  
(Emphasis ours)

In view of the clear unequivocal provisions of Section 34.030 RSMo, and the repeal of Section 14592 Laws 1943, Page 1004, it is our view that at present, all purchases by state colleges from non-appropriated as well as appropriated funds are to be made under provisions of the State Purchasing Agent Law.

We are, therefore, withdrawing the January 19, 1934, opinion rendered to W. W. Parker and are withdrawing the December 6, 1933, opinion rendered to George C. Johnson, insofar as such opinions hold that the State Purchasing Agent Law does not apply to purchases by state agencies from non-appropriated funds.

Your second question asks whether the Purchasing Agent Law applies to purchases by the University of Missouri, the State Highway Commission and the Conservation Commission.

We are enclosing a copy of an official opinion rendered under January 29, 1934, to Orville M. Barnett. Such opinion holds that the State Purchasing Agent Law is not applicable to the University of Missouri. Such opinion also holds that the State Purchasing Agent Law is not applicable to purchases from non-appropriated funds. As stated above, this latter holding, we believe to be incorrect under the present State Purchasing Agent Law. However, we believe such opinion to Mr. Barnett still to be correct in its holding that the State Purchasing Agent Law is not applicable to purchases by the University of Missouri because of the provisions of Section 9 (a) of Article IX of the Constitution of Missouri providing that the government of the State University shall be vested in the Board of Curators. Such opinion correctly holds that the constitutional provision exempts purchases by the University from the State Purchasing Agent Law. Such holding is also made in the opinion rendered by the Attorney General under date of December 6, 1933, to George C. Johnson.

The 1933 opinion relying on the case of State ex rel vs. Smith 67 SW2d 50, holds that insofar as supplies necessary to be used by the State Highway Commission in the construction of state highways

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and supplies incident thereto are concerned, the State Highway Commission is exempted from the State Purchasing Agent Law. We believe that such 1933 opinion correctly holds that purchases by the State Highway Commission of supplies necessary in the construction of state highways and supplies incident thereto are not within the purview of the State Purchasing Agent Law. We enclose a copy of such opinion.

An official opinion was rendered by the Attorney General under date of October 18, 1937, to George Blowers holding that the State Purchasing Agent Law is applicable to purchases by the State Conservation Commission. We believe such opinion is correct in so holding. We are enclosing such opinion.

The State Park Board under provisions of Section 47 of Article III of the Constitution of Missouri has been given power to expend appropriations for the acquisition, supervision, operation, maintenance, development, control, regulation and restoration of State Parks and State Park property. However, it is our view that such authority does not exempt the State Park Board from the operation of the State Purchasing Act insofar as, purchases of personal property generally are concerned. It is therefore, our view that purchases of personal property by the State Park Board are subject to the State Purchasing Law.

However, purchases by departments of the state government are not subject to the State Purchasing Law when such purchases are made by authority of statutes now in effect or which may be enacted in the future which provide that the department is specifically given power and authority to contract and purchase directly from the seller.

It should be pointed out that Section 34.030, Supra, exempts from the purview of the State Purchasing Agent Law, leases and purchases of real estate when the department involved has constitutional powers in this regard. Under the provisions of Section 41, Article IV of the Constitution of Missouri, the Conservation Commission is given such power. Under the provisions of Section 30, of Article IV of the Constitution, the State Highway Commission is given such power. Under the provisions of Section 47, of Article III, the State Park Board is given such power. Therefore, leases and purchases of real estate by the Conservation Commission, the State Highway Commission and the Park Board are not within the purview of the Purchasing Agent Law.

Your third question inquires whether agencies which do not come within the State Purchasing Agent Law have authority to establish purchasing offices and if so, what statutes apply to the regulation of such purchases.

We find no statutes specifically setting out the procedure to be followed in making purchases by state agencies which purchases are not subject to the State Purchasing Agent Law.

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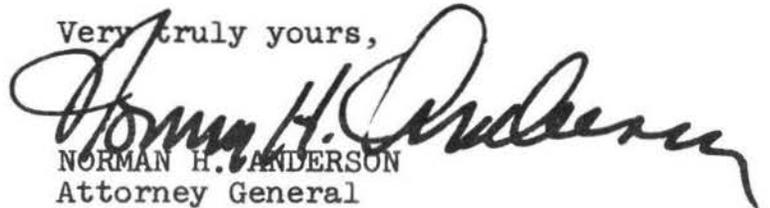
CONCLUSION

It is the opinion of this office that:

1. The State Purchasing Agent Law does not apply to purchases made by the University of Missouri.
2. The State Purchasing Agent Law applies to purchases made by departments including state colleges from non-appropriated funds.
3. The State Purchasing Agent Law does not apply to purchases made by a department under statutes now in effect or which may be enacted in the future giving a department specific authority to contract or purchase directly from a seller.
4. The State Purchasing Agent Law does not apply to leases or purchases of land by the State Conservation Commission, the State Highway Commission or the State Park Board.

This opinion which I hereby approve was prepared by my assistant Mr. C. B. Burns, Jr.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General

Encl: Opinions

January 29, 1934  
Orville M. Barnett

December 6, 1933  
George C. Johnson

October 18, 1937  
George Blowers