

LEASES:
PURCHASING AGENT:

The state may, under Chapter 34, RSMo, negotiate directly for all leases of real estate, and such leases do not have to be bid.

OPINION NO. 300

October 23, 1973



Mr. John A. Cooper, Director
Division of Design and Construction
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Cooper:

This is in reply to your request for an opinion on a number of questions concerning the bidding of lease space.

The first question is whether the state is required to bid rental space: (a) at the permanent seat of government, and (b) at places other than at the permanent seat of government.

This office in Opinion No. 88, October 28, 1949, Talley, held that the lease of premises for and in behalf of state departments must be negotiated by the State Purchasing Agent. This would be pursuant to Chapter 34, RSMo.

Section 34.030, RSMo, provides in part:

" . . . 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."

Under Section 26.300, RSMo Supp. 1971, the Commissioner of Administration performs the duties of the Purchasing Agent. Accordingly, the Commissioner of Administration shall now negotiate all leases.

Your question implies there may be a difference as to the method of acquiring rental space at the seat of government as opposed to all other places. There is nothing in Chapter 34 or any other statutes which indicate a distinction. Therefore, this question will be the same throughout the state of Missouri.

Thus, Section 34.030 requires the Purchasing Agent to "negotiate" all leases. Section 34.040, RSMo, requires that all purchases shall be based on competitive bids.

Mr. John A. Cooper

The question then is whether the negotiation of leases is included in purchases which must be bid under Section 34.040.

The legislature has defined purchase in Section 34.010.3, RSMo, as follows:

"The term 'purchase' as used in this chapter shall include the rental or leasing of any equipment, articles or things."

This definition relates to personal property by the phrase "equipment, articles or things." The ordinary meaning of these words does not include land or any interest in land.

Section 34.040, after stating that purchase must be made by competitive bid, states in part:

". . . All bids for such supplies shall be mailed or delivered to the office of the purchasing agent so as to reach such office before the time set for opening bids. The contract shall be let to the lowest and best bidder. The purchasing agent shall have the right to reject any or all bids and advertise for new bids, or, with the approval of the governor, purchase the required supplies on the open market if they can be so purchased at a better price. All bids shall be based on standard specifications wherever such specifications have been prepared by the purchasing agent as provided in section 34.050. The purchasing agent shall make rules governing the delivery, inspection, storage and distribution of all supplies so purchased and governing the manner in which all claims for supplies delivered shall be submitted, examined, approved and paid. He shall determine the amount of bond or deposit and the character thereof which shall accompany bids."
(Emphasis added)

It is apparent here that bids are necessary for purchases of "supplies" which is defined in Section 34.010.4 as follows:

"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."

Mr. John A. Cooper

Neither the definition nor the language could mean anything other than personal property or personal services. There is no language to suggest that land is included. In fact the entire chapter is devoted to the purchase of personal property. The only reference to land is in the second sentence of Section 34.030 requiring that the Purchasing Agent negotiate leases and purchase lands. Even here the first sentence of that section requires that the Purchasing Agent shall purchase all supplies, showing an intent to differentiate between personal property and land.

Therefore, it is our opinion that it is not mandatory that leases of land be bid. However, we wish to point out that this does not preclude the bidding of leases if it is determined to be desirable.

You also asked several additional questions which are all based on the answer to the first question being in the affirmative. Since we have held that the state is not required to bid rental space, it is unnecessary to answer these additional questions.

CONCLUSION

It is the opinion of this office that the state may, under Chapter 34, RSMo, negotiate directly for all leases of real estate, and such leases do not have to be bid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General