

ROADS & BRIDGES:  
STATE HIGHWAY DEPARTMENT:  
OFFICE OF ADMINISTRATION:  
COMMISSIONER OF ADMINISTRATION:  
DIVISION OF DESIGN AND CONSTRUCTION:

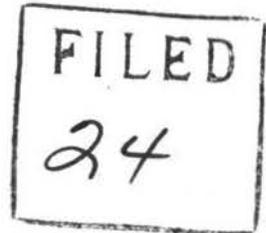
The State Highway Department is subject to the provisions of Sections 8.310 and 8.320, RSMo 1969, and accordingly must obtain the formal approval of the Commissioner of Administration before letting contracts for repair, rehabilitation, or construction of buildings and facilities. The State Highway Department is not required to obtain the formal approval of the Commissioner of Administration before obtaining architectural documents, supervising construction, and performing maintenance and inspection, provided, however, that in carrying out these activities it must conform to the reasonable procedures outlined by the Commissioner of Administration pursuant to his rule-making authority under Section 8.320, RSMo 1969. The repair, maintenance, operation, construction, and administration of highways, bridges, and tunnels by the State Highway Department are not subject to the requirements of Sections 8.310 and 8.320, RSMo.

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OPINION NO. 24

June 7, 1974

Honorable Christopher S. Bond  
Governor of Missouri  
Executive Offices  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Governor Bond:

This opinion is given in response to your request for an official opinion, which request reads as follows:

"Does the State Highway Department have the power and authority to obtain architectural documents, let contracts for repair, rehabilitation or new construction of facilities, supervise construction, and perform inspection and maintenance of facilities without the approval of the Commissioner of Administration?"

Quite simply, the answer to this question hinges upon the applicability of Sections 8.310 and 8.320, RSMo 1969, to the State Highway Department. Section 8.310, RSMo 1969, reads in part as follows:

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"The director of the division of planning and construction shall serve as 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 without approval of the director of the division of planning and construction, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director of the division of planning and construction; . . ."

Section 8.320 provides:

"The director of the division of planning and construction shall set forth reasonable conditions to be met and procedures to be followed in the repair, maintenance, operation, construction and administration of state facilities. The conditions and procedures shall be codified and filed with the secretary of state in accordance with the provisions of the constitution. No payment shall be made on claims resulting from work performed in violation of these conditions and procedures, as certified by the director of the division of planning and construction."

Since January 15, 1973, the duties of the director of the Division of Planning and Construction have been the responsibility of the Commissioner of Administration, established pursuant to Article IV, Section 12 of the Constitution of Missouri, as amended. See Section 26.300, RSMo Supp. 1973. However, Sections 8.310 and 8.320 remain otherwise unchanged.

On their face, then, these sections clearly purport to apply to the State Highway Department. Section 8.310 deals with "all department heads." Section 8.320 speaks in terms of "state facilities." Therefore, unless they irreconcilably conflict with some statutory or constitutional provision dealing specifically with the Highway Department, there can be no question that Sections 8.310 and 8.320 apply to that agency.

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We have examined the constitutional and statutory provisions dealing with the Highway Department and have discovered no conflict. At the outset, it should be noted that the State Highway Commission constructs buildings from two different sources. The Commission's main building and its ten district offices, together with any substantial additions thereto, have always been built from legislative appropriations. Other buildings are built from the state road fund, which stands appropriated without legislative action. Article IV, Section 30(b) empowers the Highway Commission to expend state road funds, "[i]n the discretion of the commission . . ." to locate, relocate, establish, acquire, construct and maintain state highways, bridges, and tunnels in specified circumstances, and: "(4) To acquire materials, equipment and buildings necessary for the purposes herein described; . . ."

However, we see no reason to distinguish, for purposes of this opinion, between buildings constructed and maintained with legislative appropriations and those built with state road funds. The Highway Department, it is important to remember, draws its principal powers from Article IV, Section 29, which reads in part:

"The department of highways shall be in charge of a highway commission. . . . It shall have authority over the power to locate, relocate, design and maintain all state highways; and authority to construct and reconstruct state highways, subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; . . ." (Emphasis added)

Although Article IV, Section 29, deals specifically with highways, and not buildings, its use of the qualifying phrase ". . . subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; . . ." is highly significant, since there could be no clearer indication that the legislature is empowered to pass laws regulating the exercise of the Highway Department's broad constitutional powers. Of course, even aside from the qualifying language of Article IV, Section 29, it is well-settled that the General Assembly has the power to enact legislation regulating the exercise of a constitutional right. State ex rel. Randolph County v. Walden, 206 S.W.2d 979 (Mo. Banc 1947).

It is important to note that Sections 8.310 and 8.320 do not in any way attempt to circumscribe or encroach upon the Highway Commission's constitutionally-granted right to acquire and maintain

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necessary buildings. Rather, these statutes simply seek to prescribe orderly and uniform procedures for the exercise of that right. It is our view, then, that Sections 8.310 and 8.320 do not conflict with Article IV, Section 29, Article IV, Section 30(b), or any other constitutional or statutory provision dealing with the Highway Department.

Such a view, it should be emphasized, is consistent with previous opinions of this office. In Opinion No. 43 issued to Robert L. Hyder on May 26, 1953 (copy enclosed), we held, among other things, that the Highway Department was required to secure the approval of the director of Public Buildings (the predecessor of the director of the Division of Design and Construction) before letting a contract for a contemplated state highway patrol warehouse, which was to be built with state road funds. This ruling was based upon an interpretation of Section 8.070, RSMo 1949, the provisions of which were almost identical to the provisions of Section 8.310. Subsequently, in Opinion No. 43 issued to Robert L. Hyder on May 7, 1959 (copy enclosed) this office reaffirmed its 1953 holding, and ruled that a contract for the contemplated construction and rehabilitation of highway department offices fell within the scope of Section 8.310.

More recently, in Opinion No. 25 issued to you on March 7, 1974, we held that the Department of Conservation was subject to the requirements of Sections 8.310 and 8.320. And on May 28, 1974, in Opinion No. 28, we held that the University of Missouri and the other state universities, although exempt from the provisions of Section 8.310 by an exception contained therein, were nevertheless subject to the requirements of Section 8.320.

In view of the previous opinions of this office and our foregoing analysis of Sections 8.310 and 8.320, it remains our opinion that the Highway Department is subject to the requirements of these sections and must, therefore, obtain the approval of the Commissioner of Administration before letting contracts for repair, rehabilitation, or construction of state buildings and facilities. However, although Section 8.310 directs that the Commissioner of Administration serve as "advisor and consultant" to all department heads in obtaining architectural plans, supervising construction, and performing maintenance and inspection, it does not require that the Commissioner of Administration formally approve these activities. Therefore, we believe that the State Highway Department is not required to obtain the formal approval of the Commissioner of Administration before obtaining architectural documents, supervising construction, and performing maintenance and inspection, provided it otherwise conforms with the regulations promulgated by the Commissioner pursuant to

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Section 8.320, which authorizes him to ". . . set forth reasonable conditions to be met and procedures to be followed in the repair, maintenance, operation, construction and administration of state facilities. . . ."

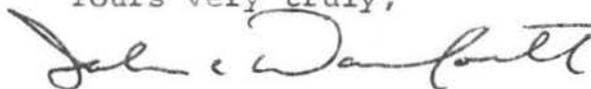
Finally, by way of clarification, we note that while the terms "buildings" and "facilities" as used in Sections 8.310 and 8.320 are not defined, common sense and usage would indicate that the legislature clearly did not intend to include highway, bridges, or tunnels within the scope of these two terms. It is, of course, a cardinal rule of statutory construction that words within statutes should be given their normal and ordinary meaning unless a contrary meaning plainly appears. Derboven v. Stockton, 490 S.W.2d 301 (Mo.Ct.App. at K.C. 1972).

#### CONCLUSION

It is our opinion that the State Highway Department is subject to the provisions of Sections 8.310 and 8.320, RSMo 1969, and accordingly must obtain the formal approval of the Commissioner of Administration before letting contracts for repair, rehabilitation, or construction of buildings and facilities. The State Highway Department is not required to obtain the formal approval of the Commissioner of Administration before obtaining architectural documents, supervising construction, and performing maintenance and inspection, provided, however, that in carrying out these activities it must conform to the reasonable procedures outlined by the Commissioner of Administration pursuant to his rule-making authority under Section 8.320, RSMo 1969. The repair, maintenance, operation, construction, and administration of highways, bridges, and tunnels by the State Highway Department are not subject to the requirements of Sections 8.310 and 8.320, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Philip M. Koppe.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 43  
5-26-53, Hyder

Op. No. 43  
5-7-59, Hyder