

STATE PURCHASING AGENT:  
INSURANCE:

Under Chapter 34, RSMo, relating to the state purchasing agent, the definition of "contractual services" is not limited to those items specifically mentioned. The phrase "contractual services" includes insurance purchased by the state, and, therefore, any such insurance must be purchased pursuant to the provisions of Chapter 34, RSMo, except as otherwise provided by law.

OPINION NO. 163

August 22, 1975

Mr. J. Neil Nielsen  
Commissioner  
Office of Administration  
Room 125, Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Nielsen:

This is in response to your request for an opinion wherein you ask us to review a previous opinion of this office, Opinion No. 28, dated May 14, 1943, to Ted Ferguson. That opinion held that the state purchasing agent did not have authority to purchase insurance for state departments and was based upon an interpretation of § 14590, RSMo 1939, which defined supplies 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. Contractual service shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service. 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."

Under this definition, Opinion No. 28 in 1943 concluded that by specifically including "telephone, telegraph, postal, electric light and power service, and water, towel and soap service," in the definition of "contractual services" this excluded any other

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contractual service. Accordingly, the opinion then held that the contractual service of insurance was excluded from the purview of the state purchasing law.

The state purchasing law is now found in Chapter 34, RSMo, and although the definitions have been rearranged somewhat, the definitions are basically the same.

First of all, § 34.030 does require the purchasing agent to purchase all "supplies" for all departments of the state, except as otherwise provided in Chapter 34. Thus, as with the 1943 opinion, the question will depend upon the definition of supplies.

Section 34.010.4 defines supplies 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."

As you can see, the question still depends on what is meant by "contractual services" as there is no doubt that the purchase of insurance would be purchasing a contractual service. Contractual services is thus defined in § 34.010.1 as follows:

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

Thus, there is no question but that you are asking whether the 1943 opinion was correct in holding under these identical definitions of "contractual services" that by so defining "contractual services" to include certain specific things, this necessarily excludes other things. As stated above, the basis of the 1943 opinion was to rely upon the rule "expressio unius exclusio alterius", which means the expression of one thing is the exclusion of another.

It is our opinion that after reviewing the 1943 opinion that the application of this rule to § 34.010 is incorrect. Section 34.010(1) clearly states that contractual services shall "include" various enumerated items. The general rule in Missouri is that the use of the word "include" implies that there may be other items which are not mentioned. See St. Louis County v. State Highway Commission, 405 S.W.2d 149 (Mo. 1966); and Lynch v. Gleaner Combine Harvester Corp. 17 S.W.2d 554 (K.C.Mo.App. 1929).

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These cases state essentially that the meaning of the word "include" may vary according to its context. Ordinarily, it is not a word of limitation but rather of enlargement. When used in connection with a number of specified objects it implies that there may be others which are not mentioned.

Accordingly, it is our opinion that the 1943 opinion was in error and we therefore withdraw that opinion.

CONCLUSION

It is the opinion of this office that under Chapter 34, RSMo, relating to the state purchasing agent, the definition of "contractual services" is not limited to those items specifically mentioned. The phrase "contractual services" includes insurance purchased by the state, and, therefore, any such insurance must be purchased pursuant to the provisions of Chapter 34, RSMo, except as otherwise provided by law.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General