

STATE PURCHASING AGENT LAW:

Appellate courts do not come within the provisions of the state Purchasing Law.

June 23, 1933.

Hon. Perry T. Allen,
Presiding Judge,
Springfield Court of Appeals,
Springfield, Missouri.



Dear Sir:

We are acknowledging receipt of your letter of June 7, 1933, in which you inquire as follows:

"We have just received a copy of Senate Bill 192, which provides for a state Purchasing Agent. No where in the bill is the Springfield Court of Appeals or either of the other appellate courts mentioned. We would like to have an opinion from your office, as to whether our Court comes under the provision of said bill.

Heretofore, our purchases, which are usually in small amounts, have been made through local dealers and we would like to know if it will be necessary to buy all supplies through the Purchasing Agent, at Jefferson City.

Under Sec. 1904 R. S. 1929 the Judge of this court have always made the contracts for rent and quarters, which we have been able to secure at greatly reduced rates.

We have had our court dockets printed in Springfield, which has been very satisfactory. We have been able to hold up sending the docket to the printer until the last moment and thus get most of the cases on the printed docket. If we had to send the docket away to be printed we would probably have to send it several weeks before the time fixed by law (which is 40 days before the first day of the term) for sending out the docket and all of the cases which were filed after the docket is sent to the printer would not appear on the printed docket. As the court is up with its docket it is essential that the cases appear on the docket so that we will know how many we are going to have, and how to set them.

We would also like to have an opinion regarding our appropriations. In House Bill 661 our appropriations are divided into four sub-divisions - A. B. C. D. Under "B" which is the appropriation for the upkeep of the libraries at Springfield and Poplar Bluff, we are allowed

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\$2000.00, which is a reduction of \$3,000.00 from the appropriation for 1931-32, and is not sufficient to pay the subscriptions to the Reporter System, without the purchase of any new text books.

We might be able to make some saving under "D" and we would like to know if the amount saved under "D" could be used for the purchase of books, office furniture and equipment. As several of these sub-divisions seem to overlap, we would also like to have an opinion from you as to just how close we are confined as to purchases under sub-divisions B. C. & D.

Personally, I feel that we probably are better advised as to our needs and ability to keep within our allowance than a Purchasing Agent, unless he should be pretty well informed about our situation. The Legislature cut us down about \$2,000.00 this year, and we really only asked for what we needed. We can not keep our Libraries up with what has been appropriated. However, I have hopes that nice times get better, which I think will not be long, the boys will raise the ante for us.

With best regards to you and all the other boys, I am."

You inquire whether or not Senate Bill No. 192, which created the office of state Purchasing Agent, applies to the appellate courts. Nowhere in the Act is the word "courts" used. The Act refers throughout to "departments." Section 11 of the Act provides * * * "The term 'department' as used in this Act shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the State." Whether or not, therefore, the Act applies to appellate courts depends on whether or not courts come within the legislative definition of the word "department" as above defined.

Legally and in common parlance the words "office, board, commission, bureau and institution" are not courts. It must be determined then whether the appellate courts are a "department" as the term is used in this particular Act. Article 3 of the Constitution of Missouri provides:

"The powers of the government shall be divided into three distinct departments; the Legislative, Executive and Judicial * * * *"

The word "department" is used in that provision of the Constitution, and the Judicial Department is named as one of the three Departments of the government. We do not believe, however, that the word "department" as used in the above constitutional provision means the same as the word "department" as used in the state Purchasing Agent Law. In Section 11 of the Act, the

word "department" is defined. If the word "department" as used in the Act has the same meaning as the word "department" as used in the Constitution, then it would have been unnecessary for the Legislature to define the word "department" as meaning "department, office, board, commission, bureau, institution" because all of the enumerations contained in the legislative definition of the word "department" come under one of the three departments of the government, to-wit; the Legislative, Executive or Judicial. If the Legislature had intended the word "department" as used in the Act to mean the same as the word "department" as used in the Constitution, then it would have been unnecessary and merely surplusage to further enumerate the various bodies, because they would be included in the meaning of the word "department". The entire government of the State, including every office, board, commission, etc., must necessarily come under one of the three departments created under Article 3 of the Constitution. It is, therefore, apparent that when the Legislature took pains to define the word as it did in Section 11, it did not intend that the word "department" as defined, should have the same meaning as the word "department" did in the above constitutional provision. The word "department", as used herein, is used in its usual and ordinary meaning. In common parlance, the word "department" has a wellknown and well-recognized meaning, to-wit; a division of the executive branch of the government. The various powers and duties of the executive branch of the government are delegated and performed by various sub-divisions, known as "departments." As an example of the sub-divisions of the executive branch, we have the Insurance Department, the Highway Department, Fish and Game Department, etc. In popular concept there is no division of the Legislative branch of the government known as a department, nor in popular concept is there any division of the Judicial branch of the government known as a department. The Legislature, therefore, must be deemed to have used the word "department" in the common meaning so generally used in common parlance, to-wit; a division of the executive branch of the government.

In 18 C. J. 490, "department" is defined as: "One of the divisions of the Executive branch of the government; a part or division of the Executive government." Both by legal definition and in common parlance the word "department", as used in the Act, must be deemed to have been used to mean a division of the executive branch of the government. Such ruling must govern our decision in your inquiry, unless appellate courts can be said to be included in the words, "or any other agency of the State," which is the balance of the definition as set out in Section 11.

The general rule in the construction of Statutes, known as *ejusdem generis*, is that where in a Statute general words

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follow particular words, the general words will be considered as applicable only to persons or things of the same general character or class and can not include wholly different things.

State Savings and Loan Co., v. Swimmer, 236 S. W. 1057,
State ex rel Goodloe v. Wurdeman, 227 S. W. 64,
Industrial Loan Company v. Missouri State Ins Co.
3 S. W. (2d) 1046.

It appears then that the words "any other agency of the State" do not tend to broaden the enumeration set out in Section 11 so as to include courts, because courts are not of the same general character or class as the enumerated classes, "department, office, board, commission, bureau, institution."

In construing Statutes, words of common use are to be construed in their natural and ordinary meaning. Hannibal Trust Company v. Elzea, 236 S. W. 371; Bellerive Inv. Co., v. Kansas City, 13 S. W. (2d), 628.

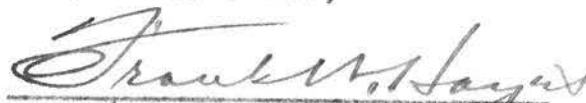
In view of the foregoing, it is therefore the opinion of this Department that the word "department" must be construed to mean a division of the executive branch of the government, and not to include appellate courts; that no other word in the definition or the general words at the end can give the construction that this Act was intended to apply to the appellate courts of this State.

As to your second inquiry, it is our opinion that the appropriations must be used for the purpose for which they are made. In 36 Cyc, 895, it is said,

"Appropriation Acts specify the purposes for which the appropriations made shall be used, and appropriations made for one purpose can not be used for any other purpose."

It is, therefore, our opinion that you are not authorized to divert funds appropriated for a particular purpose to be used for purposes other than those specified. If some of your appropriations are of such character as might reasonably fall within more than one specific appropriation, we see no objection in paying for such purchases out of either appropriation.

Very truly yours,


Assistant Attorney General

APPROVED:

Attorney General.

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