

PENAL INSTITUTIONS - STATE PRISON BOARD - Right to manufacture and sell certain articles to State and political subdivisions thereof.

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March 26, 1935.

Mr. R. L. Chapman,
Superintendent of Industries,
Jefferson City, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of March 12, 1935, such request being in the following terms:

"At a recent meeting a general discussion was had relative to a state-use law concerning the marketing of products manufactured by the inmates of the Missouri State Prison to the various other state institutions and to the political subdivisions of the state.

It was the consensus of opinion of the several persons present that Section 8340 of the Revised Statutes of Missouri, 1929, could be enforced and that all state institutions and the various political subdivisions of the state could be compelled to purchase the products and supplies which they use which could be manufactured in the penal industries.

The writer would appreciate, at your convenience, your opinion pertaining to the above, and in the event you concur, would also appreciate your comments on the questions listed below:

1. What method of enforcement could be used to compel the state institutions and the various political subdivisions of the state to purchase from the penal industries those products which they use manufactured by the prison?
2. Should Section 8340 be held valid and capable of being enforced, what relation would same have to the law creating the office of the State Purchasing Agent? "

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I

SCOPE OF STATUTE

R. S. Missouri, 1929, Section 8340, authorizes the State Prison Board to acquire and operate plants, through inmate labor "with the view of manufacturing, so far as may be practicable, such articles agreed upon by said board as are needed in any of the institutions hereinabove in this section mentioned or referred to, (all the State penal or reformatory institutions) also such as are required by the state or political subdivisions thereof, in the buildings and offices of the institutions owned, managed or controlled by the state or political subdivision thereof, also including articles and material to be used in the erection of buildings or other improvements upon, in, or in connection with, any state institutions or state properties, or in the construction, improvement or repairs of any state highways or county highways, including bridges and culverts."

Section 8342 provides in part as follows:

"Before any purchase shall be made of any said articles for the institutions hereinabove mentioned, from any other source, written requisitions shall be made upon said board by the proper purchasing agents of the state, or of the political subdivisions thereof, or of the trustees or managers of said institutions, for the said articles; and duplicate certificates shall be made by said board that it is unable to furnish or supply the same within sixty days, and said requisitions and one of said certificates shall be retained and kept by the board."

The scheme of these statutes seems to contemplate manufacture of certain supplies required by (1) the State penal and reformatory institutions, (2) other departments of the State, and (3) political subdivisions of the State.

The language of Section 8342 indicates that when any unit of any of these three classes needs any of the articles which the State Prison Board is authorized to have manufactured, such unit must requisition the Board to supply it, and can only buy such articles from other sources if it has a certificate from the State Prison Board that the Board cannot supply such articles within sixty days. Section 8342 contains a further provision that "no claim shall be audited or paid without such certificate". Thus, the

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statute on its face seems to require all departments and political subdivisions of the State to give the State Prison Board an opportunity to supply to them these articles.

II

METHOD OF ENFORCING STATUTE

The case of State ex rel. Department of Penal Institutions v. Becker, 329 Mo. 1041, 47 S.W.(2d)781 (1932), suggests one method of enforcing the above statutes, which is by mandamus to compel the appropriate officials to award a contract to supply manufactured articles to the Department of Penal Institutions, or Prison Board. The bill in that case was against the Secretary of State and the Commissioner of Motor Vehicles and it concerned automobile license plates and chauffeurs' badges, and the petition likewise asked for cancellation of a contract which had already been entered into with a private concern. For the scope of the law adequately to be tested, it would be advisable to bring such proceedings against the appropriate officials of a political subdivision, as well as against some state departmental head. If a contract for the articles in question had not been let, and if such contract were definitely in contemplation, injunction might be a proper remedy.

Another possible remedy is suggested by that part of Section 8348 above quoted which provides that no claim shall be audited or paid without a certificate from the State Prison Board that it is unable to furnish within sixty days after demand, the articles purchased in connection with the account presented for audit. If the state auditor, or the comparable official of the political subdivision in question, should refuse to approve the account without the certificate, a mandamus suit could be brought to compel such approval, or if no such refusal should be made, an injunction suit might be brought to prevent such approval.

III

EFFECT OF STATE PURCHASING AGENT ACT

In connection with the question in your letter numbered "2", we do not believe that the State Purchasing Agent law (Laws of 1933, page 410) would effect the scope of Sections 8340 and 8342 for the reason that Section 13 of such Act provides as follows:

"If any law shall provide that the state shall purchase for its own use the products manufactured by any institution of the state or shall give preference to the products of any such institution, the

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"provisions of this Act shall be deemed modified to permit the Purchasing Agent to purchase such products or give such preference in any manner prescribed by such law."

The only effect of the State Purchasing Law on the enforcement of Section 8340 might be that the State Purchasing Agent would be a party to legal proceedings instead of such official as might have been performing his functions in the absence of such Act.

The only case which we have been able to discover which construes Section 8340 so as to furnish any present assistance is the case of State ex rel. Department of Penal Institutions v. Becker, referred to supra. That case indicates a sharp divergence of opinion between the then members of the Supreme Court of Missouri regarding the scope of Section 8340, which is highly important to the present inquiry, even though that case raises certain special questions not involved in your request. The relief sought in that case has been outlined above. In addition to Section 8340 there was involved R. S. Missouri, 1929, Section 7760, requiring the Commissioner of Motor Vehicles to give preference to the State Prison Board in letting the contract for license plates and chauffeurs' badges. That case did not concern articles needed for any public buildings or offices or for the improvement of highways. In an opinion by Gantt, J., in which concurred White, Frank and Herwood, JJ., the court held that so much of Section 7760 as granted a preference to the State Prison Board was unconstitutional as not being a proper subject to be incorporated in that Act, having come to the conclusion that Section 8340 was not broad enough in scope to authorize the Prison Board to manufacture the articles in question.

Atwood, C.J. handed down a dissenting opinion, in which concurred England and Ellison, JJ., in which he construed Section 8340 as granting the power in question. The minority opinion contained the following:

"The decision reached in the majority opinion rides off on the holding that the Department of Penal Institutions has no power to manufacture license plates and chauffeurs' badges because the proviso in Section 7760, Revised Statutes 1929, as an enactment conferring such power, is ruled to be in violation of Section 26, Article IV of the Missouri Constitution. It is my view that such power is well vested in the commissioners of this department, frequently re-

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"ferred to as The Prison Board, not by anything appearing in Section 7760, but by the provisions of Section 8340, Revised Statutes 1929. If this position is well taken the constitutional objection, upon which the majority opinion rests, drops out of the case."

Section 8340 was then referred to and quoted, and the opinion continued:

"Respondents' brief casually disposes of the foregoing provisions with the observation that 'license plates are not "articles or products sold on the open market," and hence are not embraced within the language of said Section 8340.' The majority opinion treats of them as follows: 'Respondents suggest that license plates and chauffeurs' badges are manufactured and sold as per specifications in a contract and are not articles sold on the open market. It will not be necessary to determine this question, for relators plead that as a matter of law it is the duty of respondents Secretary of State and Commissioner of Motor Vehicles to award the contract to the board. In other words, they claim the contract under Section 7760, Revised Statutes 1929. Thus it appears that the Board is not seeking to manufacture said articles for the open market. The suggestion of the Prison Board is overruled.'

The expression, non sequitur, so familiar in logic, fairly applies to the above course of reasoning and conclusion reached. From the mere fact that relators here seek to compel the Secretary of State and the Commissioner of Motor Vehicles to contract with the prison board for this particular lot of plates and badges pursuant to the proviso in said Section 7760, it by no means follows that the board's authority to manufacture license plates and chauffeurs' badges must appear in Section 7760, or that these articles are not such 'articles or products that may be disposed of upon the open market at a profit to the State,' which under the provisions of Section 8340, supra,

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"the prison board is authorized to manufacture and produce. I think the very question thus suggested by respondents must be determined, and the plain meaning of Section 8340 requires that it be ruled contrary to respondents' contention.

* * *

The evident purpose of Section 8340 is to help effectuate a sound, humane public policy with reference to employment of inmates of penal institutions, and its provisions should be liberally construed. Our approval of respondents' narrow and unwarranted interpretation of this statute can but give rise to confusion and doubt as to the prison board's power, heretofore unquestioned, to engage in other lines of manufacture and production upon the successful continuance of which great public interest depends. Such approval should not be given, and for reasons herein stated I respectfully dissent."

It must be noted that in the briefs of counsel as summarized in the official reports, very little emphasis was laid on the scope of Section 8340, almost the entire argument being confined to the question of the constitutionality of Section 7760, so it would seem that the construction of Section 8340 was not adequately presented to the court. This factor and the further factor that articles were involved in that case which were not specifically covered by Section 8340, would leave that case as hardly controlling, but it gives very valuable insight into the attitude which the Supreme Court of Missouri might take in another case.

In conclusion, it is our opinion that R. S. Missouri, 1929, Sections 8340 and 8342, do give to the State Prison Board the right under certain conditions to manufacture and supply, to all the penal and reformatory institutions of this State, the various other departments of the State and the political subdivisions thereof, certain articles to be manufactured under the supervision of the State Prison Board, and it is our further opinion that the proper method of enforcing this right would be by mandamus or injunction, as more fully discussed above, and that the State Purchasing Agent Act of 1933 (Laws of 1933, page 410) would have no effect on such right.

Very truly yours,

APPROVED:

ROY McKITTRICK
Attorney General

EDWARD H. MILLER
Assistant Attorney General