

STATE BUILDING COMMISSION: Employment of architects for
PURCHASING AGENT: remodeling eleemosynary and penal
institutions under State Building
Commission Act does not have to
be approved by State Purchasing
Agent.

November 18, 1943

Hon. Forrest C. Donnell
Governor of the State of Missouri
State Capitol Building
Jefferson City, Missouri



Dear Governor Donnell:

We have for attention your letter of November 10th, in which you enclose a copy of the Resolution of the State Building Commission.

You desire to have our opinion as to whether the engagement of the firm of Keene and Simpson of Kansas City, Missouri, to perform the services as set forth in the Resolution, in connection with the rehabilitation and the correction of defects in the custodial cottages in the School for the Feeble-minded at Marshall, Missouri, as set forth in the Resolution, requires the sanction and approval of the State Purchasing Agent to make said engagement valid. In other words, you desire to know whether the engagement of this firm shall be made by the State Purchasing Agent or by the State Building Commission.

By a Joint and Concurrent Resolution of the Senate and House of Representatives, an amendment to the Missouri Constitution was proposed. This resolution is found at page 174, Laws of Missouri, Extra Session, 1933-1934.

Thereafter, said amendment to the Constitution was submitted to the qualified voters of the State at a special election on May 15, 1934, and was adopted.

This amendment provides that the General Assembly shall have power to contract or to authorize the contracting of a debt on behalf of the State and to issue bonds, not exceeding in the aggregate \$10,000,000, for the purpose of repairing, remodeling or rebuilding the eleemosynary or penal institutions of this State.

At the same Extra Session of the General Assembly (Laws of Missouri, page 107, Extra Session, 1933-1934), the General Assembly enacted a law creating the "State Building Commission," consisting of the Governor, Attorney General, Secretary of State, State Auditor, State Treasurer and State Superintendent of Schools. It was provided in said act that same should take effect and be in force when and after said proposed Constitutional amendment was adopted by the people of the State.

In 1934, in the case of State ex rel. State Building Commission, et al. v. Smith, State Auditor, 74 S. W. (2d) 27, 335 Mo. 840, the legality of this Constitutional amendment, and the bonds issued in conformity therewith, was submitted to the Supreme Court, and, in said case the court said:

"At the same session (Laws of Mo., Extra Session, 1933-34, p. 107 (Mo. St. Ann. Secs. 13748c and note, 13748d to 13748l, p. 6521)), the General Assembly enacted a law creating a state building commission. The act directed the commission to determine the needs of the eleemosynary and penal institutions and divide among them, according to said needs, the money realized from federal aid and the sale of the \$10,000,000 of bonds to be issued under said amendment. It authorized the commission to acquire land, provide plans and specifications, and make contracts in furtherance of the contemplated improvements. It provided that the expenses of said improvements be paid from the money realized from federal aid and the sale of the bonds. It also provided that the law would take effect on the adoption of the proposed amendment by the people of the state. It is well settled that a law may be enacted to become effective on the happening of a future contingency. State ex rel. Maggard v. Pond, 93 Mo. 606, loc. cit. 621, 6 S. W. 469; In re Poindexter v. Pettis County, 295 Mo. 629, loc. cit. 636, 246 S. W. 38."

(Underscoring ours.)

In this suit the validity of these bonds was sustained.

We think that it was the intention of the Legislature, in creating the State Building Commission and designating the executive officers of the State as the members of the Commission, to delegate to the Commission the full power to determine the needs of the eleemosynary institutions and to authorize it to acquire land, provide the plans and specifications, and make contracts in furtherance of the contemplated improvements, without the assistance of the State Purchasing Agent.

The State Purchasing Agent Act was enacted at the Regular Session of the 1933 General Assembly (Laws of Mo. 1933, page 410), which was, of course, previous to the creation of the State Building Commission and the adoption of the amendment to the Constitution heretofore referred to.

The State Building Commission, as created by the Legislature, was, and is, a free and independent body designated for the purpose of expending the funds derived from the sale of the bonds for repairing, remodeling or rebuilding all or any of the eleemosynary or penal institutions of this State, and it is the State Building Commission's responsibility and not the responsibility of the State Purchasing Agent to pass on the employment of the architects.

It is our opinion that if the Legislature had intended that the employment of the architects and other contractors, in connection with the expenditure of the \$10,000,000 fund to rehabilitate the eleemosynary and penal institutions of the State, should be approved by the State Purchasing Agent it would have said so directly in the Act itself.

CONCLUSION

It is, therefore, for the reasons above stated, the opinion of this department that the State Building Commission has the authority to engage the firm of Keene and Simpson to perform the services mentioned in the Resolution and that it will not be necessary that said engagement, or employment, be made by the State Purchasing Agent, nor necessary that it have his approval.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

CRH:CP