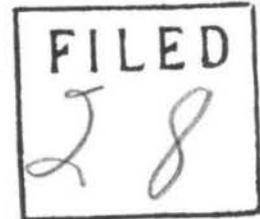


PURCHASING AGENTS: Purchasing agents, before purchasing  
PENAL INSTITUTIONS: tobacco, shall file requisition for  
said tobacco with the Commission of  
the Department of Penal Institutions.

June 4, 1945



Mr. Ted Ferguson  
State Purchasing Agent  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"I will appreciate your rendering this office an opinion as to whether or not we are required to purchase tobaccos manufactured by the Missouri Tobacco Plant, one of the industries of the State Penitentiary, for the use of the inmates of the various state institutions, particularly those under the Eleemosynary Board. According to my understanding, these tobaccos purchased are not resold but furnished free to the patients at the various institutions."

If any law requires the state to purchase its own products manufactured by any institution of the state or give preference to such products, the State Purchasing Act shall be deemed modified to permit the purchasing agent to purchase such products of the institution or give preference in any manner as prescribed by law. Section 14601, R.S. Mo. 1939, reads:

"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 provisions of this chapter shall be deemed modified to

permit the purchasing agent to purchase such products or give such preference in any manner prescribed by such law."

Section 8990, R.S. Mo. 1939, indicates that before the state, or any political subdivision thereof, may purchase articles that are manufactured by the Department of Penal Institutions, from any source, the purchasing agent of the state, or of the political subdivision thereof, shall execute a written requisition to the Commission of the Department of Penal Institutions, and if said commission cannot furnish the necessary requirements they must so inform the requisitioner. Said section reads:

"The prices for all articles so manufactured, as hereinabove provided, shall be fixed and determined by said commission, and 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 commission 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 commission 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 commission. Reasonable time shall be allowed for such manufacture of such articles in such requisitions, and such articles shall so far as practicable, be manufactured within a reasonable time after such requisitions are made. Said commission shall keep a permanent record of such purchases, together with prices therefor, made for any institution under the control of said commission. And no claim shall be audited or paid without such certificate. And all institutions of the state, or of any political subdivision thereof, dealing with said commission shall keep a like record of all purchases, with prices therefor, made by them from said commission or from any other source. Said prices charged by said commission shall not exceed the prices of like articles in

the open market. In case of any excess production from any of the industries before mentioned, or from any other industries now or hereafter established for the health and welfare of the prisoners, it shall be the duty of said commission to sell the same at the market price."

The Legislature has provided that said Commission of the Department of Penal Institutions shall purchase, lease or otherwise provide suitable plants, machinery and equipment, and has also provided for the purchase of material for the employment of all able-bodied persons in the State Penitentiary, with the view of manufacturing such articles as are needed by any state institutions, and the manufacture of other products which sell for a profit. Section 8988, R.S. Mo. 1939, provides in part as follows:

"Said board shall, as soon as practicable, proceed to purchase, lease or otherwise provide suitable plants, machinery and equipment, and to purchase material, for the employment of all able-bodied persons in the Missouri state penitentiary, the Missouri reformatory, the industrial home for girls, the industrial home for negro girls, or any other penal or reformatory institutions hereafter created, for such industries as in the opinion of the board will best occupy such persons, 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, 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, \* \* \* \* \* Provided, said board may purchase or lease upon reasonable terms such machinery as may be necessary for the manufacture and production of any other articles or products that may be disposed of upon the open market at a profit to the state, including shoes, clothing, floor mats, mops, rugs, carpets and other articles of furniture, such as beds and bedding of all kinds; also desks, chairs, tables, farm implements, fertilizer, brick or any other articles agreed

upon by the board. \* \* \* \* \*

Under Section 9065, R.S. Mo. 1939, the Legislature has provided that inmates may be furnished with tobacco not exceeding one pound per month to each convict. It is our understanding that a tobacco plant is conducted primarily for the benefit of inmates, in order to supply them with the tobacco as required in Section 9065. Said section reads:

"The convicts shall be clothed in the uniform prescribed by said commission, and shall receive the allowance of food prescribed by the rules, and no other; but the convicts under the care of the physician shall be allowed such diet as he may direct. The clothing and bedding of the convicts shall be of coarse material, and they shall be supplied with a sufficient quantity of wholesome food, of a coarse quality, according to the rules prescribed by the commission; and they may be furnished with tobacco, not exceeding one pound to each convict per month."

We assume that the Department of Penal Institutions is processing the tobacco which is raised into smoking tobacco. If this be true, such tobacco comes within the foregoing statutory provisions authorizing the Department of Penal Institutions to manufacture certain articles and products. In *Nashville Tobacco Works vs. City of Nashville*, 260 S.W. 449, 1.c. 451, 149 Tenn. 551, the court, in holding under an act that tobacco was an article manufactured, said:

"Sections 28 and 30 of article 2 of the Constitution and chapter 602, sec. 1, subsec. 2, Acts of 1907, contemplate two classes of commodities as exempt from taxes: (1) The direct product of the soil in the hands of the producer or his immediate vendee; and (2) articles manufactured of the produce of this state. After the product of the soil has passed from the hands of the producer or his immediate vendee, it is not exempt from taxation under section 28, supra. Before the conversion into an article of manufacture or until the artisan actually begins the process of manufacture, neither the

product of the soil nor the produce of this state are exempt from taxation under article 30, supra.

\* \* \* \* \*

"Tobacco like wheat is exempt from taxation in the hands of the producer and the immediate vendee of the producer under section 28, supra. Converted into chewing tobacco, smoking tobacco, or snuff, the converted leaf, like wheat ground into flour, is exempt from taxation under section 30, supra. \* \* \* \* \*"

It is a well established rule of statutory construction that in construing a statute legislative intent, if ascertainable, must be kept in mind and the whole act, or portions as are in pari materia, should be construed together. In Holder vs. Elms Hotel Co., 92 S.W. (2d) 620, l.c. 622, 338 Mo. 857, the court said:

"In construing a statute the legislative intent must be kept in mind, if it may be ascertained, and the whole act, or such portions thereof as are in pari materia, should be construed, together. \* \* \* \* \*"

Another cardinal rule of statutory construction is that all statutes applicable to the subject involved must be read and construed together and, if possible, harmonized. In State vs. Naylor, 40 S.W. (2d) 1079, l.c. 1084, 328 Mo. 335, the court said:

"We do not lose sight of the fact that all statutes that may be applicable must be read and construed together, and, if possible, harmonized. \* \* \* \* \*"

Therefore, considering all the foregoing statutory provisions together, we are of the opinion that the legislative intent was that the purchasing agent should, before purchasing any tobacco, issue a requisition to the Commission of the Department of Penal Institutions who is manufacturing tobacco,

Mr. Ted Ferguson

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and if said department has no surplus and is unable to furnish such tobacco, said department should so notify the purchasing agent who may then purchase such tobacco from some other source.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

ARH:ml