

PUBLIC BUILDINGS:

Contract for addition to State Highway Commission building to be let by Director of Public Buildings. Contract for contemplated State Highway Patrol Warehouse need not be let by Director of Public Buildings, but contract must be approved by him.

HIGHWAY COMMISSION:



May 26, 1953

Honorable Robert L. Hyder  
Chief Counsel  
Missouri State Highway Commission  
Jefferson City, Missouri

Dear Mr. Hyder:

Your letter of March 24, 1953, requested an official opinion on the following questions:

"On several occasions the question of the authority of the Board of Public Buildings with respect to buildings maintained by the State Highway Commission, constructed with State Road Funds, has arisen, and the State Highway Commission respectfully requests your official opinion on the following questions:

"1. The State Highway Commission building in Jefferson City was constructed with State Road Funds and is being maintained wholly by the Commission. Its watchmen are selected and paid by the Commission and its water and light bills are paid by the Commission from State Road Funds. Those buildings which are considered to be under the jurisdiction of the Board of Public Buildings have watchmen selected by the Board and water and light bills, together with the salaries of the watchmen, are paid from General Revenue Funds. All additions and alterations made in the Commission building have been made by the Commission since the building was constructed. Section 226.110 apparently contemplates the maintenance of the state highway building by the Board of Public Buildings. The Commission now contemplates an addition to this building and has requested authority from the Board of Public Buildings for the use of the necessary ground for such addition, which has been given. Funds sufficient to cover the cost of the addition are included in the appropriation

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bill now under consideration by the General Assembly. Should the contract for this addition be awarded by the State Highway Commission or by the Board of Public Buildings, or both?

"2. Under subsection 4 of Section 30 of Article IV of the Constitution of 1945, the Commission is empowered to acquire buildings necessary for the construction and maintenance of the state highway system. The State Highway Commission has always assumed that such buildings are not public buildings and are under the exclusive ownership and control of the State through the Highway Commission. In the past, the Missouri State Highway Commission has, by contract, provided for the buildings necessary for the operations of the State Highway Patrol which is under the general supervision of the Missouri State Highway Commission and whose salaries are paid from the State Road Fund, which under the Constitution, is under the control of the Commission. Recently, the Commission has authorized the construction of a warehouse for the use of the Patrol at the office in Cole County situated approximately five miles south of Jefferson City on Highway 63. The Comptroller has suggested that this building would be under the jurisdiction of the Board of Public Buildings and that any contract for same must necessarily be let by that Board. Section 8.010 gives the Board general supervision and charge of the public property of the State at the Seat of Government and this property is well outside Jefferson City as above stated. Is it necessary under the above circumstances that the Board of Public Buildings let the contract for the construction of this warehouse or must the expenditure be approved by it in order that payment may be made from State Road Funds for that purpose?

"Your answers to the foregoing questions at your earliest convenience will be appreciated as the contract for the construction of the Patrol warehouse has been let by the State Highway Commission."

The Missouri State Highway Commission is placed in charge of the Department of Highways by Article IV,

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Section 29 of the Missouri Constitution, 1945.

Section 226.020, RSMo 1949, vests the State Highway Commission with powers and duties specified in Chapters 226 and 227, RSMo 1949, and all powers necessary and proper to enable the Commission or any of its officers or employees to carry out fully and effectively all of the purposes of the aforesaid chapters.

Article IV, Section 30, Constitution of Missouri, 1945, deals with the source and application of highway funds as follows:

"Sec. 30. Source and Application of Highway Funds.--For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes,) less the cost, (1) of collection thereof, (2) of maintaining the commission, (3) of maintaining the highway department, (4) of any workmen's compensation, (5) of the share of the highway department in any retirement program for state employees as may be provided by law, (6) and of administering and enforcing any state motor vehicle laws or traffic regulations, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other:

"First, to the payment of the principal and interest, on any outstanding state road bonds.

"Second, any balance in excess of the amount necessary to meet the payment of the principal and interest of any state road bonds for the next succeeding twelve months shall be credited to the state road fund and shall be expended under the supervision and direction of the commission for the following purposes:

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"(4) To acquire materials, equipment and buildings necessary for the purposes herein described and

"(5) For such other purposes and contingencies relating and appertaining to the construction and maintenance of such highways and bridges as the commission may deem necessary and proper."

(Underscoring ours.)

Section 8.020, RSMo 1949, provides for the appointment of a Director of Public Buildings. Among the statutory duties of the Director of Public Buildings is the duty to serve as advisor and consultant to department heads in supervising construction and maintenance of buildings. Section 8.070, RSMo 1949, reads as follows:

"8.070. To serve as consultant to department heads on construction and maintenance of buildings.--The director shall serve as an advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation, or construction of buildings, without approval of the director, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director; provided, that there is excepted herefrom the design, architectural services, construction, repair, alteration or rehabilitation of all laboratories, libraries, classrooms, technical buildings used for teaching purposes, and those buildings or utilities serving such educational units, and any building or teaching unit wholly or in part from funds other than state appropriations."

(Underscoring ours.)

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The Director is enjoined by Section 8.100, RSMo 1949, to preserve public property from injury, as follows:

"8.100. Director shall preserve public property from injury.--The director shall preserve from waste and damage all public property at the seat of government and prevent injuries and encroachments thereon. He shall deposit in a place of safety all public property of a movable or perishable nature and preserve the same from decay or loss."

The Director is required to superintend repairs of certain public buildings as follows:

"8.120. Shall superintend repairs.--He shall contract for and superintend the repairs and construction of any public buildings or improvements that may be required, by law, at the seat of government, when no other person or officer is directed to do the same."

(Underscoring ours.)

"226.110. State highway building the official residence of the state highway commission--maintenance and repair in charge of board of public buildings.--The state highway building shall constitute the official residence of the state highway commission. Such building shall under the charge and control of the board of public buildings, which is directed and empowered to provide for the proper maintenance and repair of said buildings, and to preserve the same from waste and damage from fire and other causes. \* \* \*."

(Underscoring ours.)

There appears a possible conflict in the authority of the Board of Public Buildings and its Director, with the State Highway Commission, in the construction, repair and maintenance of buildings used by the Highway Commission. To reconcile any discrepancy all statutes and constitutional provisions must be considered in pari materia.



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It should be observed that Article IV, Section 30, Subsection (4) authorizes the Commission to expend from state road funds money to acquire buildings necessary for the purposes described in subparagraphs (1), (2), (3), (4) and (5). That section is the only constitutional provision for construction of buildings by the Highway Commission.

The purposes described in the above-mentioned subparagraphs are to build and maintain roads, bridges and tunnels.

The Legislature has seen fit to create the Board of Public Buildings and provide for a Director thereof, in order to have the state buildings under a single head. The purpose in creating this Board was to provide for an orderly plan for ascertaining what buildings are needed by the State, in what order of urgency such buildings are needed, determine what repairs and maintenance are necessary and desirable to maintain such buildings, and to secure for the State the benefits of economy and efficiency which accrue from an integrated plan for construction and repair of public buildings.

That the Legislature has the power to enact legislation regulating the exercise of a constitutional right is well-settled. The Supreme Court in *State ex rel. Randolph County vs. Walden*, 357 Mo. 167, 1.c. 176, 177, stated that rule:

"However, it does not follow from our ruling that the constitutional provision is self-enforcing that the General Assembly did not have the power to enact legislation providing reasonable regulations for the exercise of the right by prescribing the practice to be pursued in its enforcement. Such legislation may be enacted as will facilitate operation, prescribe a practice to be used for enforcement, provide a convenient remedy for the protection of the right secured or the determination thereof, or place reasonable safeguards around the exercise of the right. *Cooley's Constitutional Limitations*, (7th Ed.) p. 122, (8th Ed.) pages 170, 171, *Barker v. St. Louis County*, 340 Mo. 986, 104 S.W. (2d) 371, 376, *Tremayne v. City of St. Louis*, 320 Mo. 120, 132, 6 S.W. (2d) 935, *State ex rel.*

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Elsas v. Workmen's Compensation Commission, 318 Mo. 1004, 2 S.W. (2d) 796,  
Warner et al. v. Kenny, 165 Pac. (2d)  
(Cal.) 889, Chesney v. Byram, 101 Pac.  
(2d) (Cal.) 1106, Samples v. Grady, 182  
S.W. (2d) (Ark.), 875, 16 C.J.S. Const.  
Law, p. 99, 11 Am. Juris. Const. Law,  
p. 694."

Since Section 8.120 requires that contracts be made by the Director of Public Buildings only for buildings at the seat of government, it is necessary to determine whether Patrol warehouse is at the "seat of government."

No definition can be found of the term, but it is reasonable to assume the Legislature intended that both the geographical location of the building in question, and the purpose for which it was to be used, were both to be considered in determining whether said building was at the seat of government. Your office has informed me that the proposed Patrol warehouse is to be located on a state highway approximately five miles from Jefferson City. You have further indicated that the warehouse is to be used to store radio and other electronic repair equipment and that Troop "F" is to maintain a central repair shop for Highway Patrol radio and electronic equipment. It is obvious that the proposed building will not be within the city limits or in the contiguous metropolitan area of Jefferson City. Thus, from the geographical standpoint the proposed warehouse is not at the seat of government. The proposed function of the building is not closely related to the functions of the general headquarters of the Patrol, but instead, is a mere incidental to the over-all supervision and operation of the Patrol. Thus, from the standpoint of usage, the building is not at the seat of government.

Thus, the Highway Commission building being under the control of the Director of Public Buildings, all contracts for repairs and additions should be let by the Director pursuant to Section 8.120. However, the Patrol warehouse not being "at the seat of government" does not fall within the provisions of Section 8.120, but the contract must nevertheless be approved by the Director in accordance with Section 8.070, supra.

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CONCLUSION

It is, therefore, the opinion of this office that the contract for the contemplated addition to the State Highway Commission building should be awarded by the Director of Public Buildings, but that the contract for the contemplated State Highway Patrol warehouse need not be awarded by the Director of Public Buildings, but it must nevertheless be approved by him.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON  
Attorney General

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