

HIGHWAY COMMISSION:  
PUBLIC BUILDINGS:

A contract for contemplated construction, rehabilitation or repair of highway department district offices need not be awarded by the Chief of Planning and Construction but said contract, nevertheless, must be approved by said official.

May 7, 1959



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

Dear Mr. Hyder:

Reference is made to your request for an official opinion, which request reads as follows:

"The State Highway Commission has requested that I ask your official opinion on the following question: The State Highway Commission is authorized under Section 30, Subsection 4, of Article IV of the Constitution of Missouri 'to acquire materials, equipment and buildings necessary for the purposes herein described;'. It has been necessary in the pursuance of the constitutional mandate to construct and maintain highways that the Commission acquire and maintain buildings in various areas of the State (and outside Jefferson City) which have been designated as district offices. It has been the practice of the Commission to let contracts for the necessary enlargement of these district offices from time to time, and enlargement of one or more district offices is planned in the immediate future. Since the enactment of Laws of Missouri, 1958, pages 183-186, the Chief of Planning and Construction has advised representatives of the Highway Department that it is now a part of his functions to let contracts for work of the above-described nature on our district offices for construction and maintenance of highways outside Cole County. The two questions, therefore, presented are as follows:

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"(1) Is the Chief of Planning and Construction now authorized to let contracts involving buildings being acquired by the State Highway Commission and outside Cole County and the State Highway Commission no longer authorized to let such contracts? (2) Do you interpret the duties of the Chief of Planning and Construction under Section 7, founds in Laws of Missouri for 1958 at page 185, to be to serve as adviser and consultant to department heads in letting contracts or that he shall actually in his official capacity let all contracts?"

Section 8.310, V.A.M.S., provides in part as follows:

"The chief of planning and construction shall serve as 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 chief of planning and construction, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the chief of planning and construction; \* \* \*"

Before undertaking a discussion of this precise question, we deem it advisable to ascertain what was intended by the use of the terms "letting" and "let," in the above section. The use of these terms, under a similar statute, was construed by the Supreme Court of Georgia in the case of Eppes v. Mississippi, Gainesville & Tuscaloosa Railroad Co., 35 Ga. 33, l.c. 35, wherein the court in its opinion stated:

"By turning to Webster's dictionary, I find that 'letting' is an americanism, used to signify the act of putting out portions of work to be performed by contract, as on a railroad or canal, and it has in our country that acceptation. The letting or putting out of the contract is a different thing from the invitation to make proposals for it. The letting is posterior to the invitation for proposals. It is made after the

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proposals have been received in pursuance to the invitation, and after they have been considered; and is the act of awarding the contract to the proposer. \* \* \*

We are of the opinion that the above constitutes a correct definition and that to "let" or "letting" as used in the above statute simply means the act of awarding the contract to the successful bidder.

Section 8.310, V.A.M.S., imposes upon the Chief of Planning and Construction the duty to serve as "advisor and consultant" to all department heads in obtaining architectural plans, letting of contracts and supervising construction. Said section further provides that no contract shall be let for repair, rehabilitation or construction of buildings without the approval of the Chief of Planning and Construction. Neither this section nor any other statutory provision that we have been able to find specifically imposes upon the Chief of Planning and Construction the actual duty of making an award of a contract for the construction, repair or rehabilitation of buildings such as you have described. Consequently, we are of the opinion that a contract for the contemplated construction, repair or rehabilitation of highway department district offices need not be awarded by the Chief of Planning and Construction, although such award of contract must, nevertheless, be approved by said office.

This office reached a similar conclusion in an opinion issued to you under date of May 26, 1953, construing the provisions of Section 8.070, RSMo 1949, relating to the duties of the then Director of Public Buildings, which section was almost identical, insofar as we are here concerned, with the provisions of Section 8.310, V.A.M.S. A copy of said opinion is attached hereto.

#### CONCLUSION

Therefore, it is the opinion of this office that a contract for the contemplated construction, rehabilitation or repair of highway department district offices need not be awarded by the Chief of Planning and Construction but said contract, nevertheless, must be approved by said official.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton  
Attorney General

DDG:hw  
Enclosure