

BUILDINGS) Public bodies must enter into contracts
LINCOLN UNIVERSITY:) for labor and materials in the construction
and repair of public buildings and improvements.

September 19, 1941

Dr. Sherman D. Scruggs
President
Lincoln University
Jefferson City, Missouri



Dear Dr. Scruggs:

We are in receipt of your request for an opinion under date of September 12th, wherein you state as follows:

"We are faced with a difficulty in facilitating the erection of our building to house the new School of Journalism.

"We have our own staff of architects and building crew. These facilities are a part of our instructional program in mechanic arts courses which we offer here. With the use of this staff and the young men whom we are training in these courses, we can erect, or construct, most of the small buildings and structures on our campus.

"By directing these activities as a part of instruction we effect considerable financial economies, particularly savings in the costs of labor, as well as provide the real instructional material for our students.

"In the purchase of materials and supplies for these constructions we must go to the market for these commodities. These commodities must be purchased through the Purchasing Agency of the

State, of course. We shall want to do this. However, inasmuch as this whole construction of the smaller buildings is within our ability to carry forward, and in view of the fact that such constructions are instructional projects, and further, inasmuch as financial savings are made and greater economies are effected in general revenues of the State, we would appreciate the opinion of the Attorney General as to whether we are correct in our planning for such a construction and can proceed under such a plan to get this building, and such other buildings of like nature, under construction at once and without the necessity of submitting the entire construction and materials to bids. In other words, we shall like to know if we may proceed to erect, or construct, such building without submission of the entire job to outside bid.

"The time and delays in the delivery of materials due to Defense priorities make it necessary to request the General to give us his opinion as early as it is convenient for him. We would eagerly await his advices in this matter."

You have subsequently advised us that the proposed improvements will be in excess of \$5,000.00.

The funds you propose to use for the construction of the Journalism School are those funds appropriated by the Legislature in Section 78 of House Bill 581:

"Lincoln University. There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, for Lincoln University, for the 1941-1942 biennium, the sum of Sixty-Five Thousand Dollars (\$65,000.00) for the use of the Board of Curators of Lincoln University for the purpose of establishing, maintaining and operating a School

of Journalism, and for the payment of the necessary salaries. Additions, Repairs and Replacements and Operative expenses incurred by said Board of Curators for instituting, maintaining and operating said School of Journalism."

There is nothing in the above appropriation act which designates the manner in which the Journalism School is to be constructed. Consequently, we must look to the general statutes for guidance.

In the case of Blanchard v. Hamblin, 162 Mo. App. 242, 1. c. 251, the court said:

"The very highest policy of a state is its statutory law and if there is legislation on the subject the public policy of the state must be derived from such legislation (Moorshead v. Railways Co., 203 Mo. 121.)"

And in the case of State v. Robinson, 163 Mo. App. 221, 1. c. 226, the court said:

"In the interpretation of statutory language the meaning must be given that is most consonant with the policy or obvious purpose of the statute * * *."

An examination of Chapter 117, of the Revised Statutes of Missouri, 1939, reveals a definite policy on the part of the State to allow construction, improvement, alteration or repairs of public buildings only on contracts based on public bids.

Section 14939, R. S. Mo. 1939, provides as follows:

"No contract shall be made by an officer of this state or any board or organization existing under the laws of this state or under the charter, laws or ordinances of any political subdivision thereof, having the expenditure of public funds or moneys

provided by appropriation from this state in whole or in part, or raised in whole or in part by taxation under the laws of this state, or of any political subdivision thereof containing 500,000 inhabitants or over, for the erection or construction of any building, improvement, alteration or repair, the total cost of which shall exceed the sum of ten thousand dollars, until public bids therefor are requested or solicited by advertising for ten days in one paper in the county in which the work is located; and if the cost of the work contemplated shall exceed thirty-five thousand dollars, the same shall be advertised for ten days in the county paper of the county in which the work is located, and in addition thereto shall also be advertised for ten days in two daily papers of the state having not less than fifty thousand daily circulation; and in no case shall any contract be awarded when the amount appropriated for same is not sufficient to entirely complete the work ready for service. The number of such public bids shall not be restricted or curtailed, but shall be open to all persons complying with the terms upon which such bids are requested or solicited."

It might be argued that the above section does not prohibit boards or other public bodies from using their own labor, providing same is available, in the construction of public buildings or improvements, and that said section was only applicable in those cases when a contract was necessary. Statutes must be construed however, if possible, "so as to harmonize and give effect to all of their provisions." *Sayles v. Kansas City Structural Steel Co.*, 128 S. W. (2d) (Mo. Sup.) 1046, 1. c. 1051.

Section 14940, R. S. Mo. 1939, provides as follows:

"All appropriations made by the general assembly amounting to five thousand dollars or more, for the erection of new buildings on state account, or for the

repairing of buildings already erected on state account, shall be drawn from the state treasury only in the manner herein provided. After being furnished with satisfactory evidence that a bona fide contract has been entered into for the erection or repairing said building or buildings, and not less than thirty days after the contractor has commenced work, the state auditor may draw his warrant on the state treasury, in favor of the contractor entitled thereto, for 85 per cent of the value of all labor and materials incorporated in the work, or for materials which have been delivered on the site of the building and accepted by the architect or engineer in charge, such value being calculated in proportion to the contract amount; and thereafter not oftener than once each month the state auditor may draw his warrant on the state treasury in favor of the contractor for 85 per cent of the value of all labor and materials furnished and computed in the same manner, less all previous payments made; and upon being furnished satisfactory evidence that the contract has been satisfactorily completed and the work accepted, the state auditor shall draw his warrant on the state treasury in favor of the contractor, for the balance due on contract: Provided, that all estimates of labor and materials furnished shall be prepared and certified correct by the architect or supervising engineer in charge, and approved by proper officials of the institution, commission, or board responsible for such construction: Provided further, that in no event shall an amount exceeding 85 per cent of the entire contract price be paid to the contractor until the final payment is made after the contract is satisfactorily completed and

work accepted; and provided further, that in no case shall the amount contracted therefor exceed the amount appropriated by the general assembly for such purpose."

Said section by its terms contemplates clearly "that a bona fide contract" must be entered into for the erection or repairing of public buildings or improvements.

Of course, we readily appreciate the fact that it may be wiser and more economical for the State to permit the use of its own labor and facilities for the construction and repair of public buildings and improvements, rather than to enter into a contract for such services. However, the wisdom or unwisdom of particular acts of legislation is for the decision of the General Assembly, and not for us to determine. State v. Balsiger, 151 S. W. (2d) 521, 1. c. 523.

From the foregoing we are of the opinion that it will be necessary that Lincoln University obtain public bids and enter into a contract covering both labor and materials for the construction of its proposed Journalism School.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

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