PURCHASING AGENT: Must buy supplies for penal institutions from prison industries if they have or can within sixty days manufacture the same.

November 8, 1939

FILED

Honorable George Blowers
State Purchasing Agent
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your opinion request of November 6, 1939, which is as follows:

> "Please advise me at your earliest convenience, if the merchandise which we purchase from the Missouri State Prison for the various State Institutions must be purchased on competitive bids, or, will it be contrary to the Law to issue a direct order to the Prison for the articles which they manufacture and which they raise on the Prison Farms.
>
> I believe this can be done after reading Section 7, Page 413, of the Laws of Missouri of 1933."

Section 8340 R. S. Mo. 1929 provides authority for the Penal Board to establish industries in our various penal institutions in order to give employment to the inmates, "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." The institutions referred to in this section are: "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."

Thus, we see that the prison industries were established with a dual purpose.

Section 8342 Laws 1939, page 569, provides:

> "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 (of) 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, * * * * for said articles; (,) and duplicate certificates shall be made by said commission that it is unable to furnish or supply the same within sixty days, * * * * * * . Said prices charged by said commission shall not exceed the prices of like articles in the open market. * * * * * * ".

Under these two statutes, it is the duty of the purchasing agent of the state, before any article can be bought for the penal institution in the open market, to try to obtain the same from the prison industries. There is reason behind this command because it is a matter of common knowledge and legislative record that prison made goods cannot be freely sold everywhere, and the legislature being aware of this fact made provision for the state itself to consume as much prison made goods as possible in order that the inmates of penal institutions in this state might be kept employed during their incarceration.

In Laws of 1933, page 411, the State Purchasing Agent was created. The creation of this department took away from the penal institutions the right to make their own purchases, direct, requiring this to be done through the purchasing agent.

Section 2 of said Act provides, "The Purchasing Agent shall purchase all supplies except printing, binding and paper, as provided for in Chapter 115 R. S. 1929, for all departments of the State * * * ". Section 3 requires, "all

purchases shall be based on competitive bids", except where, with the Governor's approval, supplies may be purchased on the open market at a better price.

It is at once apparent that the terms of Sections 3 and 8342, supra, are somewhat inconsistent. How can the purchasing agent buy supplies for the penal institutions on competitive bids when he is directed to buy the same from the prison industries if they have or can manufacture said supplies in sixty days? This inconsistency existing, it became our problem to harmonize and reconcile the conflict or to determine which statute prevails if that cannot be done.

The conflict is so square we think these statutes cannot be harmonized so we proceed to determine which prevails.

The purchasing agent's Act is a general one applying to all departments of the state as well as the penal institutions. Sections 8340 and 8342, supra, are special acts applying only to the prison industries and the manner and place supplies for our penal institutions are to be purchased.

In Tevis v. Foley 30 S. W. (2nd) 68 (Mo. Sup.) the court, with respect to conflicting general and special statutes, said l.c. 69:

> "In this situation the rule of construction is that, 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute."

The legislature repealed and reenacted Section 8342 in

Laws 1939, page 569, but this in fact was only a corrective amendment since the only change made in the statute was to substitute the word "commission" for "board". Sections 8340 and 8342, supra, were enacted prior to the Purchasing Agent Act.

In State ex rel v. Brown 68 S. W. (2nd) 59 (Mo. Sup.) it is stated:

> "' * * where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.'"

In Collins v. Twellman 126 S. W. (2nd) 231 (Mo. Sup.) it is held that the:

> "Repeal of a special law by implication, through the enactment of a general law, is not favored."

In the instant case, we have a general and special statute that cannot be harmonized, the general act is later and nothing exists in the later general act to indicate the provisions of the special act are repealed by necessary implication. This brings the case squarely within the rules announced in the above cases, and under these rules the terms of Section 8342, supra, apply to the State Purchasing Agent insofar as they direct where he must first try to purchase supplies for the penal institutions mentioned and referred to in Section 8340, supra.

This conclusion is borne out in principal by the case of State ex rel v. Smith 67 S. W. (2nd) 50 (Mo. Sup.). In that case it was contended that the State Highway Department should have purchased crushed rock through the State Purchasing Agent. The decision of the court, in holding otherwise, rests on two grounds. These are that the highway department had constitutional authority to make its own purchases, and that the act passed by the legislature respecting the purchase of highway construction materials by the highway department was

a special act while the purchasing agent act was a general act which would not operate to repeal the former.

We do not believe Section 7, Laws 1933, page 413, mentioned in your request, can operate to authorize the purchasing agent to "purchase" by way of a transfer, the articles manufactured by the prison industries for the penal institutions. That section contemplates supplies bought through the purchasing agent for a department that are on hand but not needed at the time by the department for which they were purchased.

CONCLUSION

Therefore, it is our opinion that the State Purchasing Agent, when buying supplies for the penal institutions, must first try to obtain the articles desired from the prison industries in accordance with Section 8342, Laws 1939, page 569, before he purchases the same from other sources on competitive bids or in the open market.

Respectfully submitted,

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APPROVED:

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LLB:RT