

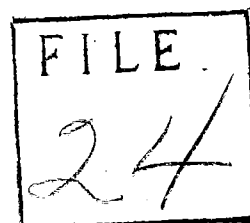
STATE PURCHASING AGENT -
(Emergency Purchases)

State Purchasing Agent may permit emergency purchases to be made by a state department without soliciting competitive bids therefor. State Purchasing Agent by rule or regulation may determine what is an emergency within the meaning of the Act.

December 5, 1941

12-5

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri



Dear Governor Donnell:

This is in response to your telephone conversation concerning a purchase of eggs by the Department of Penal Institutions, which department wishes to make this purchase without complying with the provisions of Section 14591 R. S. Mo., 1939. This statute requires such purchases to be made on competitive bids. The following are the facts which are submitted by the Department of Penal Institutions relating to this transaction:

"Relative to our conversation of this afternoon concerning eggs to be purchased from Armour and Company, Kansas City, Missouri.

"Shortly after noon, Mr. L. J. O'Brien, of the contract department of Armour & Company, called me to tell me he had available one hundred (100) cases eggs, candled, current receipts, at the same price as was paid on our last order placed with his company. This order was Purchase Order No. 75916-X, covered three hundred (300) cases of eggs as specified, at a price of \$10.78 per case.

"On contacting Mr. Price of the State Purchasing Office I was informed it would be impossible to proceed with the purchase of these eggs, even though Mr. Price informed me he had just contracted for eggs at a price in excess of \$11.00 per case."

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Under Section 14593 R. S. Mo., 1939, the Purchasing Agent may authorize "emergency purchases" direct by any department. This Section is as follows:

"The purchasing agent shall have power to authorize any department to purchase direct any supplies of a technical nature which in his judgment can best be purchased direct by such department. He shall also have power to authorize emergency purchases direct by any department. He shall prescribe rules under which such direct purchases shall be made. All such direct purchases shall be reported immediately to the purchasing agent together with all bids received and prices paid."

By this Section we think that the necessity for the soliciting of bids is dispensed with in case of an emergency purchase, because the purpose for which this provision was written into this Act is to make a purchase on short notice and without delay. It will be noted, however, that this Section requires the department to report immediately to the Purchasing Agent all bids received and the price paid. Under the foregoing Section we think that the Purchasing Agent by a rule or regulation may prescribe when an emergency exists and also how such purchases shall be made. In support of this statement we are enclosing a copy of an opinion directed to Hon. George C. Johnson, State Purchasing Agent, dated August 28, 1933.

On the question of what is an emergency we submit that that would be a question of fact. However, we find that the Kansas City Court of Appeals in the case of *Mallon v. Water Commissioners*, 144 Mo. App. 104, 1. c. 110, defined this term as follows:

" * * * That word signifies some sudden or unexpected necessity requiring immediate, or, at least, quick action, whereas the meter supplies were obtained without the presence of such a situation. They were known to be in constant demand and were needed, with approximately correct knowledge in advance in what quantity. * * * " (Under-scoring ours.)

And, in *Bigham v. Lee County*, 185 So. 818, the Supreme Court of Mississippi quoted the following definitions of the words "emergency" and "exigency", l. c. 820:

" * * * In 2 Words and Phrases, Second Series, p. 255, emergency is defined as, 'An event or occasional combination of circumstances calling for immediate action, pressing necessity, a sudden or unexpected happening, exigency.' Citing cases. 'The word "emergency" is defined in Cent. Dict. as follows: "A sudden or unexpected happening; an unforeseen occurrence or condition; specifically, a perplexing contingency or complication of circumstances. A sudden or unexpected occasion for action; exigency; pressing necessity."' Citing cases. 'The word "emergency" signifies some sudden or unexpected necessity, requiring immediate or at least quick action.' * * * "

Also, in the case of *Good Roads Machinery Co. of New England v. United States*, 19 F. Supp. 652, the

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Federal District Court of the District of Massachusetts,
at l. c. 654, in discussing the term "public exigency"
said:

"A 'public exigency' demanding immediate delivery, as referred to in the statute, is a sudden and unexpected happening; an unforeseen occurrence or condition; a perplexing contingency or complication of circumstances; or a sudden or unexpected occasion for action. (cases cited) * *"

In the case of West Virginia Coal Co. of Missouri v. City of St. Louis, 25 S. W. (2d) 466, the Supreme Court of this State had before it the question of the authority of the City of St. Louis to make coal purchases without complying with the charter requiring the solicitation of competitive bids. In this case, at l. c. 469, it would seem that the Board of Standardization was authorized to determine whether or not there was an emergency. The Court said:

" * * * Under the provision of the charter, the determination of an emergency by the board of standardization was a prerequisite to the right to purchase in the amount here in question, without advertising for proposals. * * * "

We think that the statute authorizing the Purchasing Agent to make rules and regulations pertaining to emergency purchases would be analogous to the charter authorizing the Board of Standardization to determine whether or not an emergency existed.

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CONCLUSION

It is the opinion of this Department that, where an emergency exists, and the Purchasing Agent so finds, he may authorize a state department to purchase direct under such rules and regulations as he may prescribe without advertising for bids and without posting a notice of the proposed purchase on a bulletin board in his office, as is required by Section 14591 R. S. Mo., 1939.

It is further the opinion of this Department that the question of the existence of an emergency is one of fact in each particular case, which should be determined by the State Purchasing Agent.

Respectfully submitted

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APPROVED:

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