

STATE PURCHASING AGENT: Authority to authorize emergency direct purchases by departments as result of uncertainty in the market created by National Defense Program.

August 19, 1941

Mr. Ted Ferguson
State Purchasing Agent
State Capitol Building
Jefferson City, Missouri



Dear Mr. Ferguson:

We are in receipt of your request for an opinion wherein you state as follows:

"At your earliest convenience, will you please issue this office an opinion as to whether or not, section 14594 of the Revised Statutes of Missouri, 1939, a part of which reads as follows - 'he shall also have power to authorize emergency purchases direct by any department', covers the prevailing condition of the market caused by the National Emergency. I have reference in particular to the conditions of the textile, piece goods, leather, steel and chemical market.

"We are continuously having more difficulty in obtaining quotations or bids, on many of these items as well as some others and find in many instances, our quotations are subject to immediate acceptance, both, as to delivery and price.

"The Superintendent of Industries, Missouri State Prison, in particular, has had great difficulty in securing merchandise and only after considerable

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correspondence have either he or I, been able to obtain any bids at all. In some cases, when we have received as few as one quotation, the vendor has refused to guarantee delivery or price - excepting, upon immediate acceptance. This situation leaves us with only two alternatives - either, we must accept his quotation immediately waiting no longer for other quotations, or, if, we wait for other quotations, we take the chance of not being able to get delivery or paying a higher price.

"If, in your opinion, purchases of a character as outlined above in this letter, are emergency purchases and may be purchased direct by the Department without bids, does the following apply - Section 14591 of the Revised Statutes of Missouri, 1939, part of which reads as follows: 'On any purchases where the estimated expenditure shall be two thousand dollars (\$2,000.00) or over, the purchasing agent shall advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders at least five days before bids for such purchase are to be opened' - that is, if any purchase may be construed as an emergency purchase, is it necessary, regardless of the amount, to advertise for bids for same?"

Your first question is discussed in an opinion rendered by this Department to your predecessor in office, under date of August 28, 1933, a copy of which is enclosed. We held in said opinion that Under Section 5 of the State Purchasing Agent Act, Laws of Missouri, 1933, page 412, now Section 14593, R. S. Mo. 1939, the State Purchasing Agent had the power to authorize any department to make emergency purchases direct instead of through the State Purchasing Agent. It was pointed out, however, that before such authorization was extended, the State Purchasing

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Agent should satisfy himself that the purchase was an emergency purchase and that same must be made under and consistent with the rules and regulations promulgated by the State Purchasing Agent.

It was suggested in said opinion that the rules and regulations promulgated, covering direct purchases, require that the purchases be made only after the receiving of competitive bids. This is by reason of the requirement to be found in the last sentence of Section 14593, R. S. Mo. 1939. Said section provides 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."

Your second question presents a more difficult problem. Section 14591, R. S. Mo. 1939, provides in part as follows:

"All purchases shall be based on competitive bids. On any purchase where the estimated expenditure shall be two thousand dollars (\$2,000.00) or over, the purchasing agent shall advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders at least five days before bids for such purchase are to be opened. On purchases where the estimated expenditure is less than two thousand dollars (\$2,000.00) bids shall be secured without advertising. * * *"

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We are thus confronted with a section of the statute providing for advertisement for bids by the State Purchasing Agent on purchases of \$2,000.00 or more, and another section authorizing the State Purchasing Agent to allow departments to make emergency purchases direct.

In the case of Mallon v. Water Comrs., 144 Mo. App. 104, 1. s. 110, the court in passing upon the question of what was an emergency purchase, said:

"And the manner of these purchases shows they could not have been an emergency. That word signifies some sudden or unexpected necessity requiring immediate, or, at least, quick action, * * * * *

There are a number of well defined rules of statutory construction declaring (1) that the legislative intent in the enactment of a law must be sought and effectuated in statutory interpretation, O'Malley v. Continental Life Ins. Co., 335 Mo. 1115, 75 S. W. (2d) 837; (2) that a statute will not be given a construction which will make it unreasonable or which will result in absurdity, State ex rel. and to use of Drainage District No. 8 of Pemiscot County v. McKay, 227 Mo. App. 327, 52 S. W. (2d) 229; and (3) that all parts of an act should be made effective, if possible, Elsas v. Montgomery Elevator Co., 330 Mo. 596, 50 S. W. (2d) 130.

The Legislature undoubtedly recognized that situations might arise where an immediate purchase was necessary and sought to confer upon the State Purchasing Agent the authority to allow the various state departments permission to make such purchases when the occasion arose. To say that such a situation was recognized by the Legislature and then to contend that all purchases over \$2,000.00 must be made by advertisement, which necessarily would entail the loss of time, would be unreasonable, absurd and ineffective as it relates to authority to make emergency purchases.

We recognize that the National Defense Program which provides, among other things, for government priorities has resulted in a condition which makes it impossible for

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certain classes of manufacturers and dealers to guarantee either price or delivery, thus creating the need for emergency purchases by the various departments.

We are, therefore, of the opinion that the State Purchasing Agent has the power to authorize any department to make direct emergency purchases in excess of \$2,000.00 without advertising for bids. Such emergency purchases must be made under and consistent with the rules and regulations promulgated by the State Purchasing Agent, which rules and regulations must require that said emergency purchases be by competitive bids.

Respectfully submitted,

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APPROVED:

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