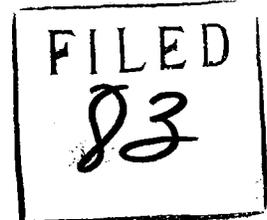


STATE PURCHASING AGENT: The State Purchasing Agent may execute a
CONSTITUTIONAL LAW: lease of real property for the Unemploy-
ment Compensation Commission of Missouri
for a period of time which exceeds two
years, provided that the terms of the
lease called for payment of rent for the
whole period within the appropriation
period in which the lease is executed.

February 4, 1946

OPINION NO. 83

Mr. William L. Smith
Purchasing Agent
State Capitol Building
Jefferson City, Missouri



Dear Mr. Smith:

This will acknowledge receipt of your letter of recent date in which you requested an opinion of this department regarding your authority to execute a lease of real property for the Unemployment Compensation Commission of Missouri. As we read your letter the questions presented are as follows:

- (1) Is the State Purchasing Agent limited to a one year fiscal period in executing a lease of real property for the Unemployment Compensation Commission of Missouri?
- (2) Is the State Purchasing Agent authorized by law to execute a lease of real property for the Unemployment Compensation Commission of Missouri, the terms of which provide for the payment of rent by the Conservation Commission at stated intervals extending beyond the appropriation period within which the lease was executed?
- (3) Is the State Purchasing Agent authorized by law to execute a lease of real property for the Unemployment Compensation Commission of Missouri, the terms of which provide for the payment of rent in a lump sum during the appropriation period within which the lease was executed, when such lease is for a longer period than said appropriation period?

Section 23, Article IV, Constitution of 1945, reads as follows:

"The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year.

The general assembly shall make appropriations for one or two fiscal years, and the 63rd General Assembly shall also make appropriations for the six months ending June 30, 1945. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

This section of the Constitution of 1945 gives the General Assembly the right to make appropriation for either one or two fiscal years. The fiscal year of the state is, by the same section, fixed as the twelve months period beginning on the first day of July in each year. The Legislature of Missouri thus has an option of making appropriations for a period of two years beginning on the first day of July of any year, instead of making such appropriation for only one year.

Section 28, Article IV, Constitution of 1945, reads as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

The last sentence of this section prohibits the incurring of any obligation, which is to be paid for out of an appropriation, after the fiscal period to which it relates. Since the Legislature may, if it so desires, make a two year appropriation, the State Purchasing Agent would be authorized to execute a lease for a two year period if the Legislature had enacted an appropriation for a two year period, and the appropriation bill provided for the payment of rents under a lease out of said appropriation. However, if the appropriation out of which said rents could be paid, was for a period of one year only, the State Purchasing Agent could not execute a lease for a period

of more than one year, unless the entire rent was to be paid within the one year appropriation period. (See discussion of question 3, this opinion.)

Section 39, Article III, Constitution of 1945, provides in part as follows:

"The general assembly shall not have powers:
(4) To pay or to authorize the payment of any claim against the state or any county or municipal corporation of the state under any agreement or contract made without express authority of law; (Ibid.)"

Under the above section the State Purchasing Agent would not be authorized to make any contract without express authority of law.

In *White v. Jones* (1944) 177 S.W. (2d) 603, 352 Mo. 359, the Supreme Court of Missouri had before it the question of the validity of a lease executed by the Board of Managers of the State Eleemosynary Institutions and the State Purchasing Agent for eighty acres of land adjoining State Hospital No. 3 at Nevada, Missouri. The lease was a six year lease providing for an annual rental of \$320.00 per year, payable on or before June 10th of each year. The lessor brought an action for damages for breach of a lease agreement and for a declaration of rights and obligations under the lease. The court held that the state was not liable for the breach of any of the agreements in the lease which created obligations accruing after the two year period subsequent to the passage of the appropriation act under which the lease was made. The court in that case said: (l.c. 606)

"Section 48 of Art. 4 of the Constitution of Missouri, relied upon by appellants, expressly prohibits the General Assembly from authorizing the payment of any claim hereafter created against the state under any agreement or contract made without express authority of law and provides that all such unauthorized agreements or contracts shall be null and void. While Section 14590, supra, expressly authorized the state purchasing agent to negotiate leases, there is no express authorization for him to incur obligations for rentals or otherwise that will fall due and become payable after the lapse of two years from the date of the passage of the appropriation out of which said indebtedness is to be paid. * * *"

Section 48, Article IV, Constitution of 1875, referred to in *White v. Jones* was the same provision which we find in Section 39(4) of Article III, Constitution of 1945.

The court also based its decision on Article X, Section 19 of the Constitution of Missouri, 1875. The court said: (l.c. 606)

"* * * No part of that appropriation was intended for the rentals or other obligations accruing more than two years after the passage of the appropriation act. Article 10, Section 19, Constitution of Mo. There was, therefore, no appropriation for these subsequently accruing rentals, nor for any obligations subsequently arising under Sections 3 and 4 of the lease, and the lease incurring these obligations was wholly unauthorized. Section 9265, supra; Chapter 105, supra; See, concurring opinion, State ex rel. St. Joseph Water Co. v. Geiger, 246 Mo. 74, 83, 93, 154 S.W. 486; L.R.A. 1916A, 1060."

Article X, Section 19, Constitution of 1875, referred to in the opinion, provided that no money should be paid out of the treasury more than two years after the passage of the appropriation act out of which the payment was to be made.

The only difference between Section 19, Article X, Constitution of 1875 and Section 28, Article IV, Constitution of 1945, with regard to the point under discussion, is that the latter provides that an obligation can not be incurred after the fiscal period to which the appropriation relates, instead of providing that the obligation shall not be incurred after a period of two years from the passage of the appropriation act. Therefore, with regard to the point ruled in *White v. Jones*, supra, the Constitutional provision under which that case was decided is the same as that found in Section 28, Article IV, Constitution 1945.

The holding of the court in the *White* case, supra, that an appropriation can not be applied to years other than those for which it is made, was also held in *State ex rel. McGrath v. Seibert* (1890), 103 Mo. 401, *State ex rel. Missouri State Agriculture v. Holladay* (1877), 64 Mo. 526, and *State ex rel. Broadwater v. Seibert* (1889), 99 Mo. 122.

The *White* case, therefore, makes it clear that (1) the State Purchasing Agent is not authorized to incur obligations for rentals that will fall due and become payable after the appropriation act within which the lease was executed; (2) that an appropriation can not be used for rentals accruing after the appropriation period within which the lease was made.

The case of *White v. Jones*, supra, requires a negative answer to the second question raised by your letter.

The question which remains however, is that of whether the State Purchasing Agent could make a lease for a term longer than the appropriation period within which the lease was made if the payment of all the rent was to be made within that period. We are

of the opinion that the State Purchasing Agent would have this right. In State ex rel. St. Joseph Water Co. v. Geiger (1912), 246 Mo. 74, the court ruled on the validity of a contract to supply water to State Hospital No. 2 at St. Joseph, Missouri, which contract was for a period of ten years and which was executed, on the part of the state, by the Board of Managers of the State Eleemosynary Institutions. The main opinion of the court decided the case on a ground other than the validity of the ten year contract, but a reading of the opinion indicated that the court felt that the contract was valid in its inception even though it was later abrogated by an inclusion of the state hospital within the boundaries of the City of St. Joseph. The concurring opinion of Woodson, J., however, dealt directly with the question of the validity of the ten year contract. Judge Woodson, at l.c. 100, said:

"We are, therefore, of the opinion, that the eleemosynary institutions of the State are public corporations and are embraced within the provisions of Sec. 12, Art. 10 of the Constitution, and that the contract made and entered into, by and between the water company and the board of managers of Hospital Number 2 was valid when made, * * * *"

The Geiger case, supra, was reversed in State ex rel. v. Eastin (1917) 270 Mo. 193, insofar as it dealt with the abrogation of a contract by the extension of city limits to include the State Hospital No. 2 at St. Joseph, Missouri. The Eastin case was a case in which the facts arose out of the same transaction as that dealt with in State ex rel. Geiger, supra. In the Eastin case the St. Joseph Water Company sued, at the completion of their contract in 1915, for the price of water furnished from 1910 to 1915 to State Hospital Number 2 at the rate of ten cents per one thousand gallons, as provided in the contract with the Board of Managers of the State Eleemosynary Institutions, which was held in the Geiger case to have been abrogated by the extension of the St. Joseph city limits. The court in the Eastin case held that the Water Company was entitled to be paid on the basis of their contract made with the Board of Managers. They thus held that the ten year contract was a valid contract. The court said: (l.c. 209)

"* * * We are only holding here upon the case made, that the contract was upon its face valid and binding (State ex rel. v. Geiger, 246 Mo. l.c. 100), and that it was not abrogated by the ordinance extending the city limits of the city of St. Joseph so as to include the State Hospital for the Insane, and that upon the admitted allegations of the alternative writ the demurrer should have been overruled. * * *"

The same sanction of long term contracts made by officers of the state government is, we think, found in *Aslin v. Stoddard County* (1937) 106 S.W. (2d) 472, 342 Mo. 148. In that case the court approved a contract made by a county court for the hiring of a janitor for a number of years which exceeded the term of the said county court. The provision of the statute, under which the court held that the county court had authority to make such a contract, provided that the county court "shall have control and management of the property, real and personal, belonging to the county" (Section 2078, R. S. Mo. 1929, M.R.S.A. Section 2078, p. 2658). This provision gives, we think, no more authority to the county court with regard to the management of real and personal property than Section 14590, R. S. Mo. 1939, Mo.R.S.A., p. 706, gives to the State Purchasing Agent with regard to the right to lease real property for departments of the state government. With reference to the authority of the county court the Supreme Court of Missouri in the *Aslin* case said: (l.c. 475)

"* * * This express authority and duty carries with it the necessarily implied authority to employ such labor and service as may reasonably be requisite in order to effectuate the express power granted. * * *"

From the foregoing cases, we are of the opinion, that the third question raised by your letter should be answered in the affirmative.

CONCLUSION

It is, therefore, the opinion of this department (1) that the Legislature may appropriate money for a period of either one or two years; (2) that the appropriation period referred to in section 28 of Article IV, Constitution of 1945, means the fiscal period of one or two fiscal years as designated by the General Assembly in the appropriation act; (3) that the State Purchasing Agent is unauthorized to execute a lease of real property for the Unemployment Compensation Commission of Missouri, the terms of which provide for the payment of rent by the Conservation Commission at intervals which extend beyond the appropriation period within which the lease was executed; (4) that, in such case, the lease would be binding upon the Commission only to the extent of the rental payments which came due within the appropriation period; (5) that the State Purchasing Agent is authorized to

Mr. William L. Smith

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execute a lease of real property for the Unemployment Compensation Commission of Missouri, the terms of which lease provide for the entire rent in a lump sum during the appropriation period within which the lease is executed, even though the lease is for a rental period extending beyond the end of the appropriation period within which the lease was executed.

Respectfully submitted,

SMITH N. CROWE, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:dc