

PURCHASING AGENT: State departments may purchase personal property, through Purchasing Agent, by trading in property to be replaced and paying balance in cash.

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Honorable William L. Smith
State Purchasing Agent
Jefferson City, Missouri

Dear Sir:

At your request and at the request of other state officials, we are reviewing the opinion of this department rendered to Honorable George Blowers, State Purchasing Agent, on June 30, 1938, which holds that the State Purchasing Agent may not exchange or trade wheat owned by the state for flour. On authority of that opinion, this department in a letter to Honorable Ira A. Jones, President of the Board of Managers, State Eleemosynary Institutions, on April 21, 1942, answered the following question in the negative:

"Is it possible for us to trade through the Purchasing Agent automobiles, paying a cash difference or receiving a cash difference in the trade?"

The 63rd General Assembly by Senate Committee Substitute for Senate Bill No. 297 repealed and re-enacted in substantially the same form the Purchasing Agent Act (chapter 105, R. S. Mo. 1939). Section 64 of S.C.S.S.B. No. 297 provides in part as follows:

"The purchasing agent shall purchase all supplies for all departments of the state, except as in this act otherwise provided.
* * *" (Underscoring ours.)

Section 69 of the same bill provides:

" * * * He shall also have power, subject to the same provisions as for bids for purchases, to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof. * * *" (Underscoring ours.)

Section 65 deals with how purchases shall be made and provides that they shall be based on competitive bids and the contract shall be let to the lowest and best bidder. The statute further provides that the "purchasing agent shall have the right to reject any or all bids and advertise for new bids, or, with the approval of the Governor, purchase the required supplies on the open market if they can be so purchased at a better price."

The question as to whether the various state departments through the State Purchasing Agent "may trade" or "exchange" state property, rests upon the construction of the words "purchase" and "sell" as used in Sections 64 and 69, supra.

It is the fundamental rule of statutory construction that the court shall, by all aids available, ascertain and give effect to the intention of the Legislature; *State v. Toombs*, 25 S. W. (2d) 101; *Thompson v. Lemarr*, 17 S. W. (2d) 960, 322 Mo. 514.

One method of determining the intention of the Legislature in enacting a particular statute is to look to the object to be accomplished; *Boll v. Condie-Bray Glass Company*, 11 S. W. (2d) 48, 321 Mo. 92. As was said in 59 *Corpus Juris* 961, "In construing a statute to give effect to the intent or purpose of the Legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose."

It is common knowledge that prior to the enactment of the "State Purchasing Agent Act" in 1933 (*Laws of Missouri 1933*, page 410) that each state department made arrangements for and purchased its own supplies. The only limitation imposed upon such purchases was that there be a sufficient appropriation to cover such purchases and that there be an unexpended balance in the state treasury to pay for the same (Sections 11404 and 11425, *R. S. Mo. 1929*).

In creating the State Purchasing Department and providing that the State Purchasing Agent shall purchase supplies for all departments, the obvious intent of the Legislature was to eliminate excessive purchases by the various departments at uncontrolled prices and to inaugurate a program of economy and system in the purchase of state supplies. Wide discretion was given to the State Purchasing Agent in the acceptance or rejection of bids so that he could effectuate this policy of securing for the state departments, supplies in the best and most economical fashion.

With this thought in mind we turn to the construction of the word "purchase" and "sell."

59 Corpus Juris 1105, states that, "Laws enacted in the interest of public welfare * * * should be liberally construed with a view to promote the object in the mind of the Legislature," and the same work points out that even when the rule of strict construction is to be followed, such rule is not violated "by permitting the words to have their full meaning or the more extended of two meanings."

The word "purchase" as used here (as distinguished from "purchase or descent" as used in real estate and probate law) has not been defined by the courts of this state. However, in Words & Phrases, Vol. 35, p. 477, the following definitions are given:

"The word 'purchase,' in its popular sense, has the narrower signification of acquisition by voluntary act or agreement for a valuable consideration. City of Enterprise v. Smith, 62 P. 324, 325, 62 Kan. 815.

"'Purchase,' in a popular and confined sense, means acquisition by way of bargain and sale or other valuable consideration, or the transmission of property from one person to another by their voluntary act and agreement, founded on a valuable consideration. Cobb v. Webb, 64 S. W. 792, 793, 26 Tex. Civ. App. 467."

The above definitions require only that the acquisition of the property be for a valuable consideration and do not limit such acquisition to the payment of money.

In State v. Miller, 300 S. W. 765, our Supreme Court had occasion to discuss the question of whether the word "sell" included the words "barter and trade." The court said:

"The word 'sell,' as defined by Webster's Dictionary, means:

"'To transfer property for a consideration; to transfer the absolute or general title to another for a price or a sum of money; * * * to dispose of in return for something.'

"And the word 'sale' in the same dictionary is defined as a contract whereby the absolute or general ownership of property is transferred from one person to another for a price or sum of money; or, loosely, for any consideration.

"These are legal definitions, and mentioned in the encyclopaedias. In the restricted sense, then, 'sell' may be distinguished from 'trade,' but in the broader sense it includes trade or barter. * * *"

It will be seen therefore that the above definitions of "purchase" and "sell" are broad enough to include the words "trade or exchange." In giving such construction to the words mentioned, the object of the Legislature in passing the statute is effectuated. It is common knowledge that in the purchase of supplies, money may be saved by trading in the used property rather than selling it and buying new supplies at the full purchase price. The "trading in" makes for economy in state government, which is the purpose of the "Purchasing Agent Act."

This interpretation is bolstered by the construction placed upon such statutes by the Legislature itself. The interpretation of a law by the General Assembly, though not controlling, is entitled to respectful consideration (State ex rel. Wayland v. Herring, 208 Mo. 708, 106 S.W. 984, 59 C.J. 1033). In 1933 the same Legislature that enacted the "Purchasing Agent Act" provided in the various appropriation bills that no passenger cars for the various departments could be purchased at a cost "including any automobile traded in" to exceed eight hundred dollars (\$800.00) each (Laws of Missouri, 1933, pages 89, 101, 112, 118, 131, 136, 139, 161). Thus the same Legislature construed the word "purchase" as including "trade in." Subsequent Legislatures in 1935, 1939, 1941 and 1943 included the "trade in provision" in the appropriation acts of those years.

Further, it will be noted that section 66 of S.C.S.S.B. No. 297, which is a new section added by the 1945 act, provides that in the purchase of surplus war materials the State Purchasing Agent may "purchase * * for cash, credit, or other property" (underscoring ours). This is, still further, an example of Legislative construction.

The only case that we have been able to find which specifically deals with the question at hand is that of Bartlett v. City of Lowell, 201 Mass. 151, 87 N. E. 195. In that case there was involved a statute which provided that the city of Lowell was to have a department of supplies with a chief

elected annually by the voters. The statute further provided that, "all materials and supplies for the city shall be purchased by the chief or head of such department subject to the approval of the mayor."

The plaintiff in the case contracted with the Superintendent of Streets whereby the gravel on the plaintiff's property was to be used by the city upon its streets and was to be paid for by other filling owned by the city which filling was to be deposited on the lot from which the gravel was taken. The plaintiff alleged that this material had not been "purchased" by the city so as to bring it within purview of the statute requiring all material to be purchased by the Department of Supplies. The Court said:

"* * * It is plain that the change made by the new charter in regard to the purchase of material and supplies was revolutionary, and that these provisions of the charter should receive a broad construction. For that reason we cannot adopt the construction contended for by the learned counsel for the plaintiff, to wit, that the word 'purchase' should be limited to a purchase for money, excluding a purchase where the property bought is to be paid for in kind and that the word 'supplies' should be limited to articles of food, and the word 'material' to 'that which the city has occasion to have on hand for the manufacture of other things.' On the contrary we are of opinion that a purchase of gravel to be taken away by the city and used in repairing the city streets, to be paid for by other filling deposited on the lot in question by the city, is a purchase of material within St. 1896, p. 365, c. 415, Sec. 3."

We believe the law as laid down by the Supreme Judicial Court of Massachusetts construing a statute practically identical with Section 64, supra, is applicable to the question presented in the instant case and that the opinion rendered by this department on June 30, 1938, to Honorable George Blowers, State Purchasing Agent, should be overruled.

Hon. William L. Smith

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CONCLUSION

It is, therefore, the opinion of this office that the various state departments and agencies, when purchasing personal property through the State Purchasing Agent to replace property of the department, may trade in the property to be replaced as part of the purchase price and pay the balance, if any, out of the proper appropriation.

Respectfully submitted,

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APPROVED:

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