

STATE PURCHASING AGENT: Supplies used by Missouri State Highway Patrol should be purchased through the State Purchasing Agent.

March 7, 1947

FILED 83

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



Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"I would appreciate having an opinion as to whether or not the State Highway Patrol has the power or authority to let their own contracts for painting their quarters, and are also authorized by law to make their own purchase of automobiles, office supplies and equipment."

For convenience, we will treat your opinion request in separate parts, for reasons which will appear in the course of the opinion. We will first consider the question as to the purchase of automobiles, office supplies and similar equipment.

The 62nd General Assembly adopted a statute designated as Section 8365a, Mo. R. S. A., which related to the purchases of equipment and supplies by the Missouri State Highway Patrol. This enactment is found in Laws of 1943, page 652, and reads as follows:

"All salaries and expenses of members of the patrol and all expenditures for vehicles, equipment, arms, ammunition, supplies and salaries of subordinates and clerical force and all other expenditures for the operation and maintenance of the patrol in the enforcement of any State Motor Vehicle Law or in the regulation of traffic on highways maintained and constructed by the State Highway Commission under the duties described in Section 8358 of this Act shall be paid monthly and shall be

paid by the state treasurer out of the proceeds of state motor vehicle fees and license taxes and state taxes on the sale or use of motor vehicle fuels as provided in section 44-a of Article IV of the Constitution of this State as amended by a vote of the people at the general election November 6, 1928, upon warrants drawn by the state auditor based upon bills of particular and vouchers certified by the officer or employee designated by the commission."

At the time the above quoted statute was enacted, there existed the State Purchasing Agent Act of 1933, found as Chapter 105, R. S. Mo. 1939. This chapter, in general terms, provided for the purchases of supplies and equipment for the various state departments by a state purchasing agent. However, the adoption of Section 8365a, MO. R. S. A., had, in our opinion, the effect of authorizing the Missouri State Highway Patrol to make its own purchases of supplies and equipment. We reach this view by reason of the fact that the statute relating to the Missouri State Highway Patrol was special in nature and was enacted later than the general statutes relating to state purchases, found as Chapter 105, R. S. Mo. 1939.

Such being the case, we think the following rule declared by the Supreme Court of Missouri in *State v. Mangiaracina*, 125 S. W. (2d) 158, quoting approvingly from *State v. Harris*, 87 S. W. (2d) 1026, to be applicable:

"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. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one. * * *"

However, this matter has again been the subject of legislative action taken by the 63rd General Assembly of Missouri. That body enacted Senate Committee Substitute for Senate Bill No. 297, creating the Department of Revenue, and providing, among other things, for the creation of a Division of Procurement, headed by a state purchasing agent.

Mr. William L. Smith - 3

Your attention is directed to Section 64 of the legislative enactment mentioned, which reads as follows:

"The purchasing agent shall purchase all supplies for all departments of the state, except as in this act otherwise provided. The purchasing agent shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the constitution of the state."

Also, to the further provisions of Section 73, as follows:

"The term 'supplies' used in this act shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except as in this act otherwise provided. Contractual services shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service. The term 'department' as used in this act shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments." (Emphasis ours.)

This Act, by its clear and unambiguous terms, would clearly have the effect of requiring that all supplies and equipment needed by the Missouri State Highway Patrol be procured through the Division of Procurement. However, Section 8365a Mo. R.S.A., has not been expressly repealed, and we, therefore, are confronted squarely by this question: Does the subsequent enactment of a general statute dealing in a comprehensive way with a particular subject matter have the effect of repealing, by implication, a prior special statute relating to the same subject matter?

It is true that repeal, by implication, of a special law by the subsequent enactment of a general law is not favored. See *Collins v. Twellman*, 126 S. W. (2d) 231. It is equally true, however, that a later general statute dealing with an entire subject matter in a comprehensive manner will have that effect. This rule of construction exists as an exception to the general rule, mentioned supra, and has been recognized repeatedly by the Supreme Court of Missouri. We direct your attention to *Manker v. Faulhaber*, 94 Mo. 430, 1.c. 440:

"In order that the latter shall operate a repeal of the former, the two acts must be ir-

reconcilably inconsistent, or it must clearly appear that the legislature intended by the latter act to prescribe the only rule that should govern in the case provided for.* * *
(Emphasis ours.)

Again, in State v. Smith, 125 S. W. (2d) 883, l. c. 885:

" * * * 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 determining whether or not the enactment of the later general statute has the effect of repealing the prior special statute, recourse must be had to the intent of the Legislature. We quote from State v. Koeln, 61 S. W. 750, l. c. 755:

" * * * The whole purpose of the many and harmonious rules of statutory construction is said to be to aid in arriving at the intention of the Legislature, as ascertained from the enactment itself, by calling in aid such of the rules as appear to have special application to the particular statute under consideration. In furtherance of such purpose we adopt and apply in this case a rule, or combination of rules, expressed in the following quotation: 'While the rule is that a general affirmative act, or the general provisions of an act, without express words of repeal, ordinarily will not repeal or affect a previous special or local act on the same subject, yet it is not a rule of positive law, but one of construction only; a special act may be impliedly repealed by a general one and the question whether it has been so repealed is always one of legislative intention.' Schot6 v. Continental Auto Ins. Underwriters, 326 Mo. 92, 31 S. W. (2d) 7; 59 C. J., sec. 536. 'The special act is not repealed unless a different intent is plainly manifested, or where the two acts are irreconcilably inconsistent or repugnant, or where the general act covers the whole subject matter of the special one * * * or is clearly intended to establish a uniform rule or system for the whole state.' 59 C. J. sec. 536; and cases cited in footnotes 85 and 89." (Emphasis ours.)

Mr. William L. Smith - 5

We think that certain guideposts to the intent of the Legislature appear from the provisions of S.C.S.S.B. 297 of the 63rd General Assembly, which clearly indicate the present situation is one falling within the exception to the rule against the repeal, by implication, of prior special statutes by the enactment of later general statutes. For example, the later general statute purports to deal in a comprehensive manner with the purchases of supplies and equipment made by all state departments, with certain specific exceptions. We think the failure to include the Missouri State Highway Patrol as one of such exceptions is, in itself, a tacit imposition upon that department of the requirements made of other departments of the state government that their purchases be made through the State Purchasing Agent.

To the same effect is the portion of Section 64 of the Act expressly requiring all such purchases be made by the State Purchasing Agent, except as otherwise provided in the Act itself. We quote from this section:

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

This, to us, again clearly indicates that in dealing with the general subject matter the Legislature meant to provide for all exceptions within S.C.S.S.B. 297 itself. Further, at no place in S.C.S.S.B. 297 has the Missouri State Highway Patrol been exempted, in express terms, from its provisions.

From the foregoing, we are persuaded to the view that it was the intention of the 63rd General Assembly, in the adoption of S.C.S.S.B. 297, to provide a complete scheme for the purchases of supplies and equipment for the various departments of state, including the Missouri State Highway Patrol; and that the adoption of such statute had the effect of repealing, by implication, the provisions of Section 8365a, Mo. R.S.A., to the extent that such statute authorized the Missouri State Highway Patrol to purchase its own supplies and equipment

Your further question relating to the power of the Missouri State Highway Patrol to negotiate contracts for the painting of its offices requires consideration of statutes relevant to the repair and rehabilitation of the public buildings of the State of Missouri.

Under the provisions of Section 8365, Mo. R.S.A., found in Laws of 1943, page 652, the Board of Permanent Seat of Government was required to furnish to the Missouri State Highway Patrol

Mr. William L. Smith - 6

offices for its general headquarters. This statute reads, in part, as follows:

"The Board of the Permanent Seat of Government shall provide suitable offices for General Headquarters at Jefferson City, Missouri,
* * *"

Although you have not so stated in your opinion request, we are cognizant of the fact that such general offices are located in the Missouri State Office Building, in Jefferson City, Missouri, at the seat of government.

At the time Section 8365, Mo. R.S.A., was enacted, such public buildings were under the control of the Board of Permanent Seat of Government, and repairs and rehabilitation thereof one of the duties of the Commissioner of the Permanent Seat of Government. The adoption of S.C.S.S.B. 297 of the 63rd General Assembly transferred such duties to the Division of Public Buildings, headed by the Board of Public Buildings, with a Director of Public Buildings also provided for. To the Board of Public Buildings was transferred the authority previously exercised by the Board of Permanent Seat of Government, as appears from the following portion of Section 114 of the Act:

"The Board of Permanent Seat of Government is hereby abolished and there are hereby transferred to and vested in the Board of Public Buildings all powers, duties, rights, liabilities and privileges heretofore vested in the Board of the Permanent Seat of Government insofar as the same are consistent with this act.
* * *"

Also, the duties previously exercised by the Commissioner of the Permanent Seat of Government were transferred to the newly created office of Director of Public Buildings, as appears from Section 115 of the Act.

Further duties have also been enumerated by the Act and placed upon the Director of Public Buildings, among which are those contained in paragraph (d) of Section 118, reading as follows:

"The Director shall serve as an advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair,

rehabilitation, or construction of buildings, without approval of the Director, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the Director; * * * (Emphasis ours.)

The painting of the interior of a public building is an act amounting to the maintenance of the building. It, therefore, falls within the scope of duties imposed upon the Director of Public Buildings. It is his duty to advise the head of any department with respect to the letting of contracts for such maintenance work, in accordance with the provisions of the statute, quoted supra. Upon determination that contractual services are necessary for such maintenance and rehabilitation, the negotiation of the actual contract therefor should be made through the State Purchasing Agent, in accordance with the provisions of the statutes quoted at length in connection with the consideration of the first question discussed in this opinion.

Having provided such a scheme for the maintenance and rehabilitation of the public buildings of the state, including the one in which the general offices of the Missouri State Highway Patrol are located, we believe it the intent of the Legislature that all contracts relating to such subjects should be negotiated by the State Purchasing Agent, after approval of such proposed contractual services has been made by the Director of Public Buildings. The exceptions found in the Act do not refer in any manner to the Missouri State Highway Patrol.

CONCLUSION

In the premises, we are of the opinion that the enactment of S.C.S.S.B. 297 of the 63rd General Assembly served to repeal, by implication, the provisions of Section 8365a, found in Laws of 1943, page 652, in so far as said section purported to authorize the Missouri State Highway Patrol to purchase supplies and equipment direct.

It is further our opinion that all purchases of supplies and equipment for the use of the Missouri State Highway Patrol should be made through the State Purchasing Agent, under the provisions of the general statutes relating to the purchase of all supplies and equipment for the use of state departments.

It is our further opinion that the Missouri State Highway Patrol does not have authority to contract for the painting of its quarters, but that such contracts must be negotiated by the

Mr. William L. Smith - 8

State Purchasing Agent, after approval thereof by the Director of Public Buildings, in accordance with the general provisions of the statutes relating to the repair and maintenance of the public buildings of the State of Missouri.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. Taylor
Attorney General

WFB:HR