

COMPTROLLER AND
BUDGET DIRECTOR:

The contract for the purchase of a rug by the Missouri Supreme Court did not need to be approved by the state comptroller and budget director; that a contract for repairs to the Missouri Supreme Court Building should have been approved by the Director of Public Buildings.



February 3, 1954

Honorable Newton Atterbury
Comptroller and Budget Director
Department of Revenue
Jefferson City, Missouri

Dear Mr. Atterbury:

This department is in receipt of your letter dated November 24, 1953, in which you ask certain questions regarding the duties of your department.

"We received your letter of November 10, 1953, the first paragraph reading as follows:

"The purchasing agent's act specifically excludes the legislative and judicial branches, and I am enclosing copies of two opinions, one dated June 7, 1947, and one dated November 7, 1947."

"I believe that you mean by this that legislative and judicial branches are not required to go through the usual procedure as do other departments when (1st) an encumbrance is made against their accounts before obligations are incurred, (2d) in furnishing the comptroller with copies of contracts for certain purchases or contractual services and (3rd) in submitting payments to the comptroller with the understanding it is up to his office to decide if charges are properly made.

"Two specific deals brought this matter up. One was the purchase of rugs from the Jefferson Rug Company for \$2,859.36, the other was the paying of contractual work of the Western Waterproofing Company in the amount of \$11,432.50. We know the judicial and legislative branches operate on a basis different from that decreed for the other state departments. The above items have been processed by this department and paid, but the responsibility of the comptroller's office in connection with these payments is frankly not clear in our minds. We do not wish to ask either the judicial or legislative

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departments to comply with any rules that do not apply to them but at the same time we do not wish to neglect any duties which the law places on us. We are particularly concerned in Missouri Revised Statutes 1949, sections 8.070, 8.260, 8.250, 33.030 and 33.040, as to whether these sections apply to any extent to the judicial and legislative branches. The questions in our minds in regard to the two above mentioned transactions were (1) in the case of the rug should the obligation have been posted to our records as an encumbrance before the actual contract was made with the Jefferson Rug Company, and (2) should the comptroller's office decide as to the propriety of the charge made. For instance, as regards charge, had you bought a rug for the Attorney General's office, we would have insisted the price of \$2,859.36 be paid either out of your additions or replacements appropriation. The rug purchased from the Jefferson Rug Company was paid for by the Supreme Court out of their operations appropriation, but according to the wording of the appropriation, as well as the general understanding of the meaning of the term, operating expenses would not cover such a purchase. Similar questions arise in regard to the Western Waterproofing Company. If such a transaction had been made by another department, under the sections of the statutes above mentioned, we would have received before the contract was made from the Department of Public Buildings a copy of the contract, with a request for encumbrance. The amount of the contract, if proper, would have been charged against the account, as set forth under sections 33.030 and 33.040.

"As we before mentioned, we do feel the judicial and legislative branches are put on a different footing, but is the law which puts them on such status sufficient to relieve the comptroller's office of the duties required under sections 8.070, 8.260 and 8.250?

"Possibly your letter of November 10, 1953, was intended to answer all the above, but in thinking back on our discussion I am afraid I did not completely cover the matters that concerned us."

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In the above you direct our attention to Chapters 8 and 33, RSMo 1949, and to specific sections in each chapter. We shall consider first the parts of Chapter 8 to which you refer, which are Sections 8.070, 8.250, 8.260. This chapter relates to the jurisdiction of the Board and the Director of Public Buildings. Section 8.070, supra, reads 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; provided, that there is excepted herefrom the design, architectural services, construction, repair, alteration or rehabilitation of all laboratories, libraries, classrooms, technical buildings used for teaching purposes, and those buildings or utilities serving such educational units, and any building or teaching unit built wholly or in part from funds other than state appropriations."

Under the above section we believe that the state building inspector was a proper advisor in regard to the repairs made recently on the Supreme Court Building and that the contract for those repairs should not have been entered into without his approval. Obviously he would not have anything to do with the purchase of the rug referred to by you.

Section 8.250, supra, referred to by you, reads as follows:

"No contract shall be made by an officer of this state or any board or organization existing under the laws of this state or under the charter, laws or ordinances of any political subdivision thereof, having the expenditure of public funds or moneys provided by appropriation from this state in whole or in part, or raised in whole or in part by taxation under the laws of this state, or of any political subdivision thereof containing five hundred thousand inhabitants or over, for the erection or

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construction of any building, improvement, alteration or repair, the total cost of which shall exceed the sum of ten thousand dollars, until public bids therefor are requested or solicited by advertising for ten days in one paper in the county in which the work is located; and if the cost of the work contemplated shall exceed thirty-five thousand dollars, the same shall be advertised for ten days in the county paper of the county in which the work is located, and in addition thereto shall also be advertised for ten days in two daily papers of the state having not less than fifty thousand daily circulation; and in no case shall any contract be awarded when the amount appropriated for same is not sufficient to entirely complete the work ready for service. The number of such public bids shall not be restricted or curtailed, but shall be open to all persons complying with the terms upon which such bids are requested or solicited."

We believe that the provisions of the above section would apply to the contract with the Western Waterproofing Company, since that contract was for an amount in excess of \$10,000.

Section 8.260, supra, referred to by you, provides the manner of payment of appropriations of \$5,000 or more for the erection of buildings or for their repair. This section we believe to be applicable to the contract with the Western Waterproofing Company referred to above.

Let us now give attention to Chapter 33, RSMo 1949, and to Sections 33.030 and 33.040, thereof. Those two sections read:

"Section 33.030--The division of the budget and comptroller shall have the power and its duties shall be:

"(1) To assist the director of revenue in preparing estimates and information concerning receipts and expenditures of all state agencies as required by the governor and general assembly;

"(2) To certify approval of the incurring of all obligations for the payment of money. As a prerequisite to such certification, the comptroller shall ascertain that the obligation to be incurred is within the work program and budget allotment. Each such certification from the comptroller to the state auditor shall be accompanied by a copy of the purchase order.

"(3) To preapprove all claims and accounts and

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certify them to the state auditor for payment. As a prerequisite to his preapproval of claims and accounts, the comptroller shall ascertain that such claims and accounts are regular and correct. Each such certification from the comptroller to the state auditor shall be accompanied by a copy of the invoice.

"(4) To prepare and report to the governor or to the general assembly when requested any financial data or statistics which he or it may require, such as monthly or quarterly estimates of the state's income and cost figures on the current operations of departments, institutions or agencies."

"Section 33.040. 1. No expenditure shall be made and no obligation incurred by any department without the following certifications:

"(1) Certification by the comptroller pursuant to the provisions of section 33.030;

"(2) Certification by the auditor that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it.

"2. At the time of issuance each such certification shall be entered on the general accounting books by the comptroller as an encumbrance on the appropriation and on the allotment; provided, that if the obligation shall not be incurred after such certification shall have been entered on the general accounting books as an encumbrance on the appropriation and on the allotment, such certification shall be removed from the general accounting books as an encumbrance on the appropriation and on the allotment. Any officer or employee of the state who shall make any expenditure or incur any obligation without first securing such certifications from the comptroller and the auditor shall be personally liable and liable on his bond for the amount of such expenditure or obligation. To prevent inconvenience and delay, the comptroller and the auditor shall be authorized to establish a system for certification of emergency or anticipated minor obligations and expenditures, and non-budgetary expenditures."

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We now call attention to the fact that Section 34.010, RSMo 1949, states that: "The term 'department' as used in this chapter shall be deemed to mean department, office, board or commission, bureau, institution, or any other agency of the state except the legislative and judicial departments." While Section 34.010, supra, refers to "as used in this chapter" such section is found as Section 73, Laws Mo. 1945, page 1428, and there the phrase is found to be "as used in this Act." The Act therein referred to contains what are now Sections 33.030 and 33.040. We believe, therefore, that the term "department" as used in Section 34.010, supra, has reference to the provisions of Sections 33.030 and 33.040, supra. Section 33.030 is found in Laws Mo. 1945, page 1428, Section 36. Section 33.040, is found in Laws Mo. 1945, page 1428, Section 60. It is to be noted that Section 33.040 referring to the certification by the comptroller pursuant to the provisions of Section 33.030 refers to "any department". Therefore, we do not believe that Sections 33.030 and 33.040 apply to the judicial branch of the government. In view of this, we believe (1) that in the case of the rug the obligation did not have to be posted on your records as an encumbrance, and (2) that approval by the office of the comptroller before contract of purchase was made was not necessary.

CONCLUSION

It is the opinion of this department that the contract for the purchase of a rug by the Missouri Supreme Court did not need to be approved by the state comptroller and budget director; that a contract for repairs to the Missouri Supreme Court building should have been approved by the Director of Public Buildings.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON
Attorney General