

ADMINISTRATION, COMMISSIONER OF:  
CONTRACTS:  
HIGHWAYS AND TRANSPORTATION, DEPARTMENT OF:  
OFFICE OF ADMINISTRATION:  
PURCHASING AGENT:

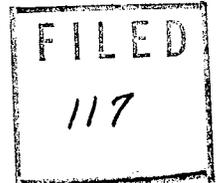
The Commissioner  
of Administration  
has the responsi-  
bility to purchase  
data processing  
services and to

purchase, rent, or lease data processing equipment for the Department of Highways and Transportation; the Department of Highways and Transportation may purchase, rent, or lease such equipment or services only if the Commissioner of Administration delegates such authority to the department pursuant to Section 34.100.

June 9, 1983

OPINION NO. 117-83

John A. Pelzer  
Commissioner of Administration  
Capitol Building, Room 125  
Jefferson City, Missouri 65101



Dear Mr. Pelzer:

You have requested an opinion on the following question:

Is the Commissioner of Administration responsible for purchasing, leasing, and/or renting data processing equipment, supplies and services for the Department of Highways and Transportation?

Section 34.030, RSMo 1978,<sup>1</sup> states:

The commissioner of administration shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided. The commissioner of administration 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. [Emphasis added.]

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1. All statutory references are to RSMo 1978, unless otherwise indicated.

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Section 34.010.2 defines the word "department" as any "department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments." The Department of Highways and Transportation is a department of the State in the executive branch of Missouri government. Article IV, Section 12, Missouri Constitution. Therefore, the Department of Highways and Transportation is a "department" under the definition of that word in Section 34.010.2.

Section 34.010.4 defines the words "supplies" as "supplies, materials, equipment, contractual services and any and all articles or things, except as in this chapter otherwise provided." Section 34.010.1 defines the words "contractual services" to "include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service." Data processing equipment, as a type of equipment, comes within the definition of the word "supplies" in Section 34.010.4. Data processing services are a type of "contractual service" within the definition of that phrase in Section 34.010.1 and are a type of "supplies" under Section 34.010.4.<sup>2</sup> When data processing equipment is rented or leased, it is "purchased" for purposes of Section 34.010.3. Therefore, the Commissioner of Administration has the authority to purchase data processing services and to purchase, rent, or lease data processing equipment for the Department of Highways and Transportation. The Department of Highways and Transportation may purchase, rent, or lease such equipment or services only if the Commissioner of Administration delegates such authority pursuant to Section 34.100.

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2. In Opinion No. 28, Ferguson, 1943, we concluded that "contractual services" were limited to those services enumerated in the statute. In Opinion No. 163, Nielsen, 1975, we formally withdrew the 1943 opinion and concluded that the word "include" in the definition of "contractual services" indicates that contractual services are not limited to those items specifically mentioned in the statute. In Opinion Letter No. 22, Muckler, 1980, we concluded that the historical learned professions, law and medicine, are exempt from the provisions of the State Purchasing Law. In Opinion No. 128, Bradford, 1981, we refused to expand the "professional services exemption" to include engineering.

Most data processing service contracts will be of a routine nature, e.g., repairs, but even if the contract in question were a consultant contract involving the design or engineering of a processing system, such would be a "contractual service" under Section 34.010.1.

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The legislature has spoken very clearly in regard to data processing acquisition. Section 37.110 establishes a data processing unit in the Office of Administration and states in part: "No state data processing equipment shall be added or disposed of by any state agency by sale, lease or otherwise without the approval of this unit." Section 15.9 of the Omnibus State Reorganization Act of 1974, App. B, RSMo 1978, provides in part: "The commissioner of administration is hereby authorized to coordinate and control the acquisition and use of electronic data processing (EDP) and automatic data processing (ADP) in the executive branch of state government. . . ."

Apparently, Opinion No. 82, Cantrell, 1968, has caused some confusion. Among other things, this opinion dealt with the exemption in Section 34.030 for leases and purchases of land by departments with the constitutional power to acquire land. This opinion concluded that the State Highway Commission, predecessor of the State Highways and Transportation Commission, was entitled to this exemption, because it had such a constitutional power under Article IV, Section 30, Missouri Constitution (repealed). There is language in this opinion to the effect that supplies necessary in or incident to the construction of state highways fall into this exemption. This language should not be read as authorizing the State Highways and Transportation Commission to interfere with the coordinated data processing system provided for the State by the General Assembly through the creation of the Electronic Data Processing Coordination Division of the Office of Administration.

#### CONCLUSION

It is the opinion of this office that the Commissioner of Administration has the responsibility to purchase data processing services and to purchase, rent, or lease data processing equipment for the Department of Highways and Transportation; the Department of Highways and Transportation may purchase, rent, or lease such equipment or services only if the Commissioner of Administration delegates such authority to the department pursuant to Section 34.100.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Phillip K. Gebhardt.

Very truly yours,



JOHN ASHCROFT  
Attorney General