

APPROPRIATION:
STATE PARK BOARD:

Trucks may be purchased under Section 74,
House Bill 66.

May 20, 1941

5571



State Park Board
Jefferson City, Missouri

Attention: Mr. E. A. Mayes,
Assistant Director

Gentlemen:

This will acknowledge receipt of your request for an opinion under date of May 19, 1941, inquiring as to the legality of the State Park Board purchasing several trucks to be used for construction work now in progress in the state parks on Federal Works Progress Administration and paying for same out of the appropriation in Section 74, House Bill 66 as passed by the Sixty-first General Assembly.

A determination of this question will first require an examination of whatever agreement or contract entered into between the State Park Board and the Works Progress Administration to determine if the purchase of such trucks constitute a necessary expenditure for securing the expenditure of federal funds for construction work in state parks. If they are a necessary expenditure, then it is the opinion of this department that same may be made from the said appropriation act.

Under H. J. Resolution 544 in the United States Congressional Service Act of the 76th Congress, chapter 432, page 608, we find under Section 1 (c) the following language:

"* * Provided, That the funds appropriated in this section shall not be used for the purchase of any construction equipment or machinery in any case in which such equipment or machinery can be rented at prices

determined by the the Commissioner to be reasonable, and his determinations, made in conformity with rules and regulations prescribed by him, shall be final and conclusive: * * * * *

Also, in Section 10 (c) of same resolution we find the following language:

"No non-Federal project shall be undertaken or prosecuted under appropriations under this joint resolution (except under section 3) unless and until the sponsor has made a written agreement to finance such part of the entire cost thereof as the head of the agency, if the agency administers sponsored projects, determines under the circumstances is an adequate contribution taking into consideration the financial ability of the sponsor. The head of the agency shall prescribe rules and regulations relating to the valuation of contributions in kind by sponsors of projects through furnishing the use of their own facilities and equipment and the services of their own employees, which shall represent an actual cash value, and such rules and regulations shall also allow credit only to the extent that the furnishing of such contributions represents a financial burden which is undertaken by the sponsors on account of Work Projects Administration projects, or other sponsored projects."

Therefore, it is evident that the Works Progress Administration never intended to purchase trucks or equipment on these projects but intended to allow reasonable rental per hour for the use of trucks and equipment owned by the State Park Board, the sponsor, which shall be credited to sponsor's share of total cost of the project. This, we understand, is the policy of the Works Progress Administration on all similar projects.

The State Park Board and the Works Progress Administration entered into a written agreement signed by Mr. E. A. Mayes, Assistant Director, and Mr. I. T. Bode, Director of the State Parks, on a Works Progress Administration form number 301, for the year 1941. It will be noted that on page one of this Master Proposal under number one (c) the sponsor, the State Park Board, has agreed to furnish equipment amounting to \$79,028.00, and the Works Progress Administration to furnish no equipment whatsoever. Attached to and made a part of the agreement we find the following list of the kind of equipment to be furnished, etc.:

Trucks	<u>Capacity</u>	<u>No. of Units</u>	<u>Rental Rate</u> <u>Per Unit</u>	<u>Basis of</u> <u>Rental</u>
	1½ Tons	40	\$1.25	Hour
<u>Aggregate Rental</u>		<u>Federal</u>	<u>Sponsor</u>	
38,733			\$48,417.00	

all of which clearly indicates that the State Park Board has agreed to furnish trucks for construction work in state parks on federal projects and the amount hereinabove shown under sponsor is the amount of credit to be allowed the State Park Board for the use of their trucks which credit shall be applied against their proportionate share of the total cost of the projects in the state park.

Unquestionably it was the opinion of the State Park Board that it was a necessary expenditure for the Board to make in order that this federal assistance for the construction work in state parks be secured.

The word "equipment" as used in this agreement has various meanings, a few of which we will now mention. In United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co. et al., 85 P. (2d) 1085, 1. c. 1089, "equipment" is defined in the following manner:

"The test of whether a given thing constitutes a supply or equipment is whether the article forms a part of the finished structure; and in addition if, although such things do not become a physical

part of the finished product, structure, or improvement, they are entirely consumed in the course of the construction they are supplies and not equipment."

In *United States Rubber Co. v. Washington Engineering Co.*, 149 Pac. 706, 707, a contract was entered into by the city of Tacoma with the Washington Engineering Company. Under the terms of the contract the engineering company was to erect a vertical lift across a river. Under the Code the city took from the contractor a bond as surety, conditioned that the contractor should pay all laborers, mechanics, and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions or supplies for the carrying on of such work. In the above case the court said:

"* * * To determine, then, whether a given article furnished the contractor is or is not within the terms of the bond, it is necessary to distinguish between materials, provisions, and supplies on the one side and the contractor's working equipment on the other. To distinguish between materials and equipment is comparatively easy, since the term 'materials,' as we have defined the term in *Gate City Lumber Co. v. Montesano*, 60 Wash. 586, 111 Pac. 799, includes such articles only as enter into and form a part of the finished structure, or, it may be, such articles as are capable of being so used and are furnished for that purpose, while 'equipment' is, what the word imports, the outfit necessary to enable the contractor to perform the agreed service, the tools, implements, and appliances which might have been previously used or might be subsequently used by the contractor in carrying on other work of like character.

Standard Boiler Works v. National
Surety Co., supra. * * * * *

In Dorsett v. State, 289 Pac. 298, 1. c. 301, 302,
the court held that automobiles are comprehended within
the terms "equipment" and "machinery." In so holding the
court said:

"It is well established by numerous
cases long followed in this state
that only such expenditures of pub-
lic moneys are permitted and only
such contracts made by public of-
ficers are enforced as are specificall-
ly or by inference and implication
provided for by law. * * * * *

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"There can be no question but that
the state highway commission, when it
deems expedient and for the best
interests of their operations and
for the efficient utilization of
the personnel employed by it, is
authorized to buy automobiles for
the department of highways. This
authority is implied even though
not specifically mentioned. Ensley
Motor Car Co. v. O'Rear, 196 Ala.
481, 71 So. 704; Henry v. Rogers, 19
Ala. App. 376, 97 So. 427; Bice v.
Foshee, 19 Ala. App. 421, 97 So.
784; Townsend v. Gash, 267 Ill. 578,
108 N. E. 744; Cain v. Borroughs
Adding Machine Co., 180 Ky. 567,
203 S. W. 315; Board of County Com-
missioners v. Isenberg, 10 Okl. 378,
61 P. 1067. Statutes must be given
their reasonable construction to ef-
fectuate the end proposed. Board of
County Commissioners v. Barr, 68 Okl.
193, 173 P. 206. Automobiles are
comprehended within the terms 'equip-

ment' and 'machinery' as well as in the term 'vehicles.'" (cases cited)

In Linde Air Products Co. et al. v. American Surety Co., 152 So. 292, l. c. 293, the court said:

"* * * The contract was for the construction of a gas pipe line from Jackson to Hattiesburg. The bond contains a number of conditions, among which is 'that if the said contractor shall pay all persons, firms and corporations who perform labor or furnish equipment, supplies and materials for use in the work under the contract * * * this obligation shall be void; otherwise to remain in full force and effect.'

* * * * *

"The final contention of the appellee is that the word 'equipment' 'was used because certain of the items involved in the construction of the pipe line, used in the work of constructing the pipe line, might not be covered by the word 'materials,' and means 'equipment and supplies used in the pipe line itself, as a part thereof.' The word was unnecessary for that purpose, because under prior decisions of this court all material of every character that enters into the construction of a pipe line, either permanently or temporarily, is covered by the words 'supplies and materials.' The word 'equipment,' therefore, must be given its usual and ordinary meaning, which is, the outfit, i. e., tools, machinery, implements, appliances, etc., necessary to enable one to do the work in which he is engaged. Landau v. Sykes, 98 Miss. 495, 54 So. 3, Ann. Cas. 1913B, 197. * * * * *

May 20, 1941

CONCLUSION

Therefore, in view of the opinion this department recently rendered holding the State Park Board may expend any part of the appropriation under Section 74, House Bill 66 that was required to secure the expenditure of the federal funds in state parks, and in view of the agreement hereinabove mentioned between the State Park Board and the Works Progress Administration wherein the State Park Board agreed to furnish equipment, and further in view of the above definitions of "equipment," it is the opinion of this department that those trucks necessary to fulfill the hereinabove agreement may be purchased out of the appropriation in Section 74, House Bill 66.

Respectfully submitted

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APPROVED:

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