

PURCHASING AGENT: Purchasing Agent is not permitted under the statutes to take out insurance policies on any of the State institutions.

April 29, 1942

Mr. Ted Ferguson
State Purchasing Agent
Jefferson City, Missouri



Dear Sir:

Your request for an opinion on an insurance matter has been referred to me. The request is as follows:

"Will you please render this office an opinion as to whether the purchase of insurance, fire, explosion, accident, liability, and/or theft for state departments and institutions comes within the jurisdiction of this office.

"At this time I have an order to purchase an insurance policy for the Missouri State Trachoma Hospital at Rolla, Missouri, covering damage to buildings or equipment and personal injury caused from explosion of the boilers, air tanks, and/or furnace of this institution."

There are two questions to be considered in the expending of State funds. First, is such expense authorized by statute and second, has there been an appropriation for such purpose? Article IV, Section 48, of the Constitution of Missouri, is the basis for the first question, said article and section reading as follows:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to

grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

As to the second question we must look to Article X, Section 19, of the Constitution of Missouri, which provides as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

In other words, in order for the State institutions and departments to carry insurance of any kind upon their properties, the officials managing such institutions must have authority by statute to make contracts for insurance and the legislature must have made an appropriation for the payment of the premiums for such coverage.

Section 13043, R. S. Mo. 1939, provides as follows:

"No warrant to be drawn or paid unless money appropriated for payment. No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

There is no specific statute in this State which provides that the State of Missouri shall carry any insurance on the buildings and property owned by the State. Therefore, it will be necessary that we look to the statutes creating the boards or heads which manage, control and operate these institutions and departments to ascertain what authority that such boards or heads have with regard to insurance contracts, and then look to the appropriation act to learn whether or not appropriation has been made for the purchase of any insurance for the particular departments and institutions.

In your request you ask that our opinion cover "state departments and institutions." In view of the fact that there is no general statute providing for the purchase of insurance by the State, consequently, we would be forced to examine the statutes setting up and governing the action and powers of the Board of control or head of each department, bureau and institution in the State of Missouri. However, since you specifically state that your problem has to do with a policy of insurance on the Trachoma Hospital at Rolla, we will therefore confine our views to that particular institution. But in answering your query with reference thereto, we will necessarily set up the method of determining this insurance question in each of the other State institutions and departments.

Section 9735, R. S. Mo. 1939, with reference to the State Board of Health, reads as follows:

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages and towns. It shall make a study of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the state. It may send representatives to public health conferences when deemed advisable, and the expenses of such representatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

In the Laws of Missouri for 1937, at page 161, the appropriation act for the construction and equipping of the Trachoma Hospital is set out, this act providing as follows:

"Section 130. Trachoma Hospital Building and Equipment.--There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, the sum of Seventy-five Thousand Dollars (\$75,000.00) for the construction and equipping of a Trachoma Hospital at Rolla, Missouri; including new buildings, building equipment, heating plant, light plant, water supply and plumbing; labor, materials, furniture, advertising, architectural service and supervision services, superintendence and inspection, and all necessary incidental and miscellaneous expenses and contingencies incurred in the construction and equipping of the building. All materials contracted for shall be of the best quality, and preference shall be given to Missouri materials and Missouri labor, where the same are of a suitable character and can be obtained at reasonable market prices."

The appropriation bill for this institution for 1939-40 is set out on page 126 of Laws of Missouri for 1939, Section 40-a, and provides as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of \$50,000.00, for the use of the Department of Health for the years 1939-1940 to be expended for the Trachoma Hospital and the prevention of blindness hereinafter stated:

"A. Personal Service:

"Salaries of: Surgeon in charge of Trachoma Hospital, assistant physicians, hospital nurses, attendants, cooks, maids, janitors and other necessary personnel. . \$25,000.00

"D. Operation--General Expenses:

Communications, printing and binding, transportation of things, travel within and without the State, rent, other general expense ; materials and supplies; educational, scientific, laboratory and recreational supplies, laundry, cleaning and sanitation supplies, medical, surgical and hospital supplies, light, heat, power and water supplies, stationery and office supplies 25,000.00

TOTAL OUT OF GENERAL REVENUE \$50,000.00"

The appropriation act setting aside the money for 1941-1942 is set out in Laws of Missouri for 1941, page 96, and reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) for the use of the Department of Health for the period beginning January 1, 1941 to June 30, 1941 to be expended for the Trachoma Hospital and the prevention of blindness hereinafter stated:

"A. Personal Service:

"Salaries of: Surgeon in charge of Trachoma Hospital, Assistant physicians, hospital nurses, attendants, cooks, maids, janitors and other necessary personnel . . \$10,000.00

"D. Operation--General Expenses:

"Communications, printing and binding, transportation of things, Travel within and without the State, rent, other general expense; materials and supplies; educational, scientific, laboratory and recreational supplies, laundry, cleaning and sanitation supplies, medical, surgical and hospital supplies, light, heat, power and water supplies 7,500.00

Total out of General Revenue . \$17,500.00"

As can be seen from reading the statute creating the Board of Health and also the different appropriation acts, nowhere is any mention made of "insurance" or "insurance premiums."

Referring again to Article X, Section 19 of the Constitution, cited supra, we quote the following phrase,

"* * * * and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; * * * *." Can we say that any of the provisions of the appropriation acts set out above, refer to "insurance premiums"? We think not; and further we think that when the Legislature failed to include "insurance premiums" or "insurance" in the appropriation acts, cited supra, it served notice upon the public that it did not intend that any of the moneys set aside for the Trachoma Hospital should be used for the payment of premiums on any kind of insurance to be carried on the property of this particular institution and that the State of Missouri carry its own insurance and assume the loss, if any, on these buildings and other property.

Turning to the question as to whether or not your department should purchase the insurance on any of the property of the State institutions or departments, we will cite you to the powers of the State Purchasing Agent as defined in Section 14590, R. S. Mo. 1939, which provides as follows:

"The purchasing agent shall purchase all supplies except printing, binding and paper, as provided for in chapter 120, R. S. 1939, for all departments of the state, except as in this chapter otherwise provided. He 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."

As can be seen the powers are to purchase all "supplies, except printing, binding and paper," and further shall negotiate certain leases and purchases of lands. Obviously, the only power under which it could be contended that the purchasing agent could contract for insurance, would be under the term "supplies." This brings us to the definition of the term "supplies" as used here.

"Supply" or "supplies" is defined as:

"The amount of a commodity available for meeting a demand."

---Funk & Wagnalls Standard Dictionary.

"Provisions."

---Encyclopedia Britannica.

"That which is supplied; sufficiency of a thing for want; a stock; a fund."

---Worcesters English Dictionary.

"Supply is used chiefly in the plural-- 'supplies,' and has been variously defined as meaning accumulated stores reserved for distribution; available aggregate of things needed or demanded in amount sufficient for a given use or purpose; necessities collected and held for distribution and use; quantity of something furnished or on hand; quantity of something supplied or on hand; stock, store or stores; such things as are used to meet a want."

---60 C. J., 1167.

Under none of the definitions of the word "supply" or "supplies," cited above, are we able to place insurance of any kind. The only case we find in point is Miller Ins. Agency v. Porter, 20 Pac. (2d) 643, 93 Mont. 567, in which the court said:

"The ambiguity existing in the term 'supplies' as used in the statute, the practical construction excluding insurance policies from the term, as used in Section 256, supra, and the sanction of the Legislature to such interpretation by reason of its inaction lead to the conclusion that, and we hold, that fire insurance policies are not included in the word 'supplies.'"

The fact that this case cites only fire insurance would have no effect, as we think that, as far as the power to purchase is concerned, the particular type of insurance whether it be fire, explosion, accident, liability or theft, they would all be governed by the same rules.

An insurance policy is a contract and has been defined as follows:

"'Insurance' as that term is commonly understood, is a contract whereby a promisor, for a consideration usually called a premium, becomes bound to indemnify or compensate the promisee or one designated by him for loss or damage from stated causes in a definite or ascertainable amount."

--State ex rel. Herbert v. Standard Oil Co., 35 N. E. (2d) 437, 440, 441; 138 Ohio St. 376.

"'Insurance' is a contract by which one party, for an adequate consideration paid to him, undertakes to indemnify or guarantee the other against loss by certain specified risks; an agreement wherein one becomes surety for another that the other shall not suffer loss or damage upon the happening of certain contingencies, upon specified terms."

--Commerce Title Guaranty Co. v. United States, D. C. Tenn., 32 Fed. Supp. 75, 77.

"Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency."

--32 Corpus Juris 975.

April 29, 1942

We could continue to cite definitions of "insurance" for an indefinite period, but it is apparent that the term "supplies" as used in Section 14590, R. S. Mo. 1939, was not intended by the Legislature to include "insurance" or "insurance premiums."

Conclusion

It is the opinion of this department, that unless a statute empowers the managing boards or heads of the institutions and departments of the State to contract for insurance coverage on the property which they control, and unless the appropriation acts affecting their institutions or departments set out an amount to be paid for such insurance, that such managing boards and heads of institutions and departments can not contract for or purchase said insurance.

It is also the opinion of this department that the Board of Health does not have power given it by statute to purchase insurance for the Trachoma Hospital at Rolla, and that no appropriation has ever been made to purchase such insurance, and, therefore, that no insurance can be purchased for such institution.

It is further the opinion of this department that the Purchasing Agent of the State is not given the authority, nor does he have the jurisdiction, if any, to purchase insurance for the divers institutions and departments of the State.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED: .

ROY McKITTRICK
Attorney-General

JSP:EG