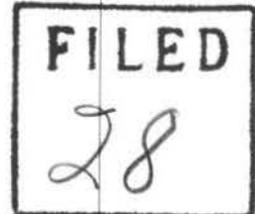


STATE PURCHASING AGENT: Permitted to purchase coal other than that mined in Missouri for use by State Social Security Commission.

August 17, 1942.

Honorable Ted Ferguson
State Purchasing Agent
Jefferson City, Missouri



Dear Mr. Ferguson:

The Attorney-General wishes to acknowledge receipt of your letter of August 10th in which you request an opinion from this Department. Your request, omitting caption and signature, is as follows:

"Will you please issue this office an opinion as to whether or not Section 14619 R. S. Missouri, 1939, applies to the purchase of coal by this department for the State Social Security Commission for distribution to relief clients in the city of St. Louis.

"This matter has been brought to my attention by Mr. Curran of the Curran Coal Company, St. Louis, a copy of whose letter is attached as well as a copy of the invitation to bid in question.

"At the same time, I would appreciate your opinion as to whether there are any statutes in the state of Missouri which would prohibit me from purchasing coal which meets the specifications of the St. Louis City Smoke Ordinance."

In order to arrive at a solution of this matter we will first cite the authorities which we think will govern. Consequently, the first authority we will cite is Section 9396, R. S. Mo. 1939, which provides as follows:

"A State Social Security Commission is hereby created and established. It shall be vested with and possessed of the powers herein specified, and also all other powers necessary or proper to enable it to carry out fully and effectually the purposes stated herein or duties imposed by any state law upon the Commission or in amendatory laws. Said Commission is created for the purpose of acting as a State agency to administer state plans and laws involving:

"(1) Pensions or assistance to persons seventy years of age or over or who, after December 31, 1939, is sixty-five years of age or over, who are incapacitated from earning a livelihood and are without means of support;

"(2) Aid to dependent children;

"(3) Aid or relief in cases of public calamity;

"(4) Child welfare services;

"(5) Any other plan wherein duties are imposed by any state law upon the State Commission."

We will next cite you to the first two paragraphs of Section 9397, R. S. Mo. 1939:

"Whenever in this law, or in any proceedings under this law, the following words or terms are used, they shall be deemed and taken as the meaning ascribed as follows:

"State Commission shall mean the State Social Security Commission as herein created; * * * * *

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Further we will cite you to Section 14590, R. S. Mo. 1939, which provides for the purchase of supplies for the several departments 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."

We then wish to call your attention to Section 14616, R. S. Mo. 1939, which reads as follows:

"Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer or other governing body shall purchase and use only those materials, products, supplies, provisions and other needed articles produced, manufactured, compounded, made or grown within the state of Missouri, when they are found in marketable quantities in the state and are of a quality suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states: Provided, however, that quality and fitness of articles shall be considered in purchasing or letting contracts for articles herein mentioned."

The final provision of the statute which we wish to cite you is Section 14619, R. S. Mo. 1939, which provides as follows:

"That the board of trustees or other officer or officers in charge of every institution in the state of Missouri which is supported in whole or in part by public funds, and who are required to purchase coal for fuel purposes in the operation of any such institution, shall be required to purchase and use coal which is mined in the state of Missouri, if the cost of coal mined in the state of Missouri is not greater than the cost of coal mined in any other state or states, including the cost of transportation."

By a study of Section 9396, supra, and the first two paragraphs of Section 9397, supra, we quickly come to the conclusion that the State Social Security Commission is a state and not a federal department. In Section 9396, cited above, we find the following:

"Said Commission is created for the purpose of acting as a State agency * * *."

Section 9397, supra, provides:

"State Commission shall mean the State Social Security Commission as herein created."

In view of the fact that the State Social Security Commission is a state department, Section 14590, supra, imposes the duty on the State Purchasing Agent to purchase all supplies to be used by that department. Therefore, it becomes the duty of the State Purchasing Agent to purchase the supplies of coal for the use and needs of said commission. This being true, the only question remaining in your request is relative to the type of coal to be purchased for the use of the relief clients of the State Social Security Commission in the City of St. Louis.

As can be seen from Section 14619, supra, all officers, or in this case the Purchasing Agent, who purchase coal in this State for the use of State "institutions" shall purchase coal which is mined in this State if the cost of such coal is not greater than the cost of coal mined in any other state or states, including the cost of transportation.

Further, it is common knowledge that coal mined in the State of Missouri is a type of coal which does not conform to the requirements of the St. Louis City Smoke Ordinance, which ordinance was held constitutional in the late case of *Ex parte Ballentine v. Nester*, handed down by the Supreme Court of Missouri on August 6, 1942, and which has not as yet been reported in the official reports.

It is clear that Section 14619, referred to above, refers to state "institutions." The question then confronts us as to whether or not the State Social Security Commission is a State "institution" within the meaning of this section. For a definition of the State Social Security Commission we will cite you to the case of *Howlett v. The Social Security Commission*, 149 S. W. (2d) 806 (Mo. Sup.). In that case this Commission is defined as follows:

"The State Social Security Commission is an executive governmental agency (State ex rel. Hackmann, 314 Mo. 43, 232 S. W. 1007) and like the Workmen's Compensation Commission, the Public Service Commission and the State Highway Commission, the Social Security Commission exercises quasi judicial powers."

Following such definition above, we are of the opinion that the State Social Security Commission cannot be placed under the term "institution" as referred to in Sections 14619 and 14620 of the Revised Statutes of Missouri for 1939. Furthermore, as can be seen from a study of Section 14619, cited above, the coal purchased under that particular section is to be used for "fuel purposes in such institutions." As we understand your inquiry you do not contemplate such state of facts. In view of the fact that the Commission is not an "institution" under the special section (Section 14619) with regard to the purchase of coal, and that under said section the purchase of coal for the use of such state "institutions" is for "fuel purposes" only, the purchase of supplies and coal for such Commission for the use stated in your inquiry will be governed by the general statute referring to Missouri products, which is Section 14616, set out above. This section provides that Missouri products, materials and supplies should be purchased for state use but there is a proviso at the end of the statute which states:

"Provided, however, that quality and fitness of articles shall be considered in purchasing or letting contracts for articles herein mentioned."

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As we have stated above, it is well recognized that Missouri does not produce coal which conforms to the standard as required by the St. Louis City Smoke Ordinance. Therefore, such Missouri coal, applying the proviso above, is not of the correct quality or fit for use in the restricted areas of the City of St. Louis by the relief clients of the State Social Security Commission. Therefore, we feel that if the Purchasing Agent is convinced that Missouri coal is unfit for use in the City of St. Louis, he is, under the statutes, at liberty to purchase other coal which does conform to the Smoke Ordinance of such city.

Conclusion.

Therefore, it is the opinion of this department, under the authorities cited above, that there are no statutes in the State of Missouri which would prohibit you from purchasing coal which meets the specifications of the St. Louis City Smoke Ordinance.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG