

PURCHASING AGENT: Commissioner of Permanent Seat
PERMANENT SEAT OF GOVERNMENT: of Government has authority to
hire labor to paint interior of
State Capitol.

December 9, 1943



Mr. R. W. Winn, Commissioner
Permanent Seat of Government
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, under date of November 18, 1943, which reads as follows:

"At a meeting of the Board of the Permanent Seat of Government on Monday, November 15, 1943, the matter of painting the interior of the State Capitol Building was taken up by the Board, and after considerable discussion the Board directed the Commissioner of the Permanent Seat of Government, Robert W. Winn, to request an opinion from the Attorney General's Office as to whether or not labor for the painting of the inside of the Capitol Building must be employed through the Purchasing Agent, or whether the Board would be within its rights in hiring a reputable painter by the hour to do the said painting on the inside of the State Capitol Building.

"I am, therefore, making a request of you for the aforesaid opinion."

One of the cardinal rules of statutory construction is to determine the intention of the Legislature in enacting said provision and, if possible, to give it that construction and meaning. In *City of St. Louis v. Pope*, 126 S. W. (2d) 1201, l. c. 1210, the court said:

"In the Senter Commission Company Case, City of St. Louis v. Senter Comm. Co., 337 Mo. 238, 85 S. W. 2d 21, this court laid down this rule (page 24), 'The primary rule of construction of statutes or ordinances is to ascertain and give effect to the lawmakers' intent * * * * * this should be done from the words used, if possible, considering the language honestly and faithfully to ascertain its plain and rational meaning and to promote its object and manifest purpose.' * * * * *"

In the State Purchasing Agent Act, it provides in Section 14590, R. S. Mo. 1939, that the State Purchasing Agent shall purchase all supplies for all departments of the State, except printing, binding and paper, as provided in Chapter 115, R. S. Mo. 1929. Section 14590 reads:

"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."

Another exception to the above statutory provision is Section 14593, R. S. Mo. 1939, which provides that under certain conditions such purchases of a technical nature, or, for emergency orders, may be purchased by the various departments under procedure prescribed by the Purchasing Agent. Said section reads:

"The purchasing agent shall have power to authorize any department to purchase direct any supplies of a technical nature which in his judgment can best

be purchased direct by such department. He shall also have power to authorize emergency purchases direct by any department. He shall prescribe rules under which such direct purchases shall be made. All such direct purchases shall be reported immediately to the purchasing agent together with all bids received and prices paid."

Under Section 14599, R. S. Mo. 1939, of the same Act, the term "supplies" used therein is defined and is broad enough to cover paints which might be necessary for use in painting the interior of the State Capitol. Said section reads:

"The term 'supplies' used in this chapter shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except as in this chapter otherwise provided. Contractual services shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service. The term 'department' as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state."

I think it will be conceded by all concerned that labor cannot possibly come within any of the provisions hereinabove referred to, unless it might possibly come under the words "contractual services." You will note that Section 14599, supra, also provides that supplies shall include "contractual services," which shall include telephone, telegraph, postal, electric light and power service, and water, towel and soap service. However, nowhere in the Act do we find any specific provision which in any manner of imagination authorizes the State Purchasing Agent to hire labor for the decoration of the Capitol Building.

By using the general words "contractual services," followed by more specific words, we are of the opinion that the Legislature intended to not only include such contractual services as were specifically mentioned, but others of a similar nature and kind, but did not intend to include a general contract to paint the Capitol or repair same. 59 Corpus Juris, page 980, Section 580, in part reads:

"* * * So words of general import in a statute are limited by words of restricted import immediately following and relating to the same subject.
* * * * *

In view of the foregoing provisions of the State Purchasing Agent Act there can be no question but that the Purchasing Agent is the proper, authorized person to purchase paints and other necessary supplies to be used in painting the interior of the State Capitol Building, unless such purchase comes within the hereinabove specific provisions. However, we think this would not be true if a contract should be let on a turnkey basis whereby the contractor furnished all necessary supplies and labor and made one charge for all work and labor.

Section 10265, R. S. Mo. 1939, creates a board of permanent seat of government and provides that said board shall have general supervision and charge of the public property of the State at the seat of government, and reads:

"There is hereby created a board to be known as the Board of Permanent Seat of Government, to consist of the governor, secretary of state, state auditor, state treasurer and attorney-general, which shall have general supervision and charge of the public property of the state at the seat of government. This board shall have power to appoint a commissioner of the permanent seat of government, who shall hold his office, at the pleasure of the board, and shall receive twenty-five hundred dollars per

annum which shall be in full for all services rendered the state. Said commissioner shall in all things where he is in this chapter given charge or control, hold such power subject to the direction of the board of permanent seat of government."

Section 10272, R. S. Mo. 1939, further authorizes the Commissioner of the Permanent Seat of Government to contract for and superintend the repairs and construction of any public buildings or improvements that may be required by law at the seat of government, when no other person or official is directed to do the same. Said section reads:

"He shall contract for and superintend the repairs and construction of any public buildings or improvements that may be required, by law, at the seat of government, when no other person or officer is directed to do the same."

We also find that Section 10267, R. S. Mo. 1939, requires the Commission of the Permanent Seat of Government to preserve all State property.

Section 10269, R. S. Mo. 1939, further vests in the Commissioner of the Permanent Seat of Government charge of the Capitol, and provides that he shall take care of same and see that it is not injured and is kept in repair, and further that he shall keep same in good condition, and reads:

"He shall have charge and control of the capitol, and shall take care that the same be not injured or get out of repair. He shall keep the rooms not occupied, and all other places, clean and in good condition. Rooms not in use shall be locked. He shall place all the furniture and articles belong-

ing to the state, and not used about the capitol, in some secure part of the building, and shall keep the keys of the same. He shall take care that no combustible matter be brought into or accumulate in or about the capitol, and shall use all precautions against accidents from fire or other causes."

Section 10285, R. S. Mo. 1939, requires the Board of Permanent Seat of Government to hire sufficient watchmen to preserve the peace and order in the buildings over which it has charge and control.

In the foregoing statutes vesting certain powers in the Board of Permanent Seat of Government and the Commissioner, we find in many instances the following words have been used: "general supervision" and "charge and control."

General supervision was construed in Aull v. City of Lexington, 18 Mo. 401. In that case the court was required to construe an ordinance giving the board of aldermen of said city general supervision of the health of said city. In construing the words "general supervision" the court held that such provision should be construed to grant active, efficient power to reach whatever may be necessary to the preservation of public health. And, further, that such power should not be limited to purely advisory measures and that the board, under such authority of the ordinance, may even rent a building to be used as a hospital to protect the city from infection of cholera. In so holding the court, at l. c. 402, 403, said:

"The power of 'general supervision over the health of the city' is very indefinite, and when it is found to be the principal power conferred upon a board of health, it is evident that the council of the city designed to comprehend more than a mere authority to examine into the condition of the health of the city, and advise the measures necessary for its preservation. * * * * *

"In construing this ordinance, we must suppose that it was intended to confer useful powers upon the board, and that the general terms of the grant were employed for the purpose of making the powers as extensive as the necessities and dangers of the community appeared to require. When, then, the necessity existed for a house to be used as an hospital, as has been found in the present case, we think it must have been within the contemplation of the ordinance that the board should exercise the power of renting such house."

Also, in *Great Northern Railway Co. v. Snohonish Co.*, 93 Pac. 924, the court, in defining general supervision given to the State Board of Tax Commissioners over county boards of equalization and taxable property, held that the Commissioners did not merely act in an advisory capacity, but had also power to classify inter county railroads and fix the value thereon for purposes of taxation.

In *State v. Erhr*, 204 N. W. 867, the court held that to have control over a place is to have authority to manage, direct, superintend, restrict and regulate it. In so holding the court said:

"In general, to have 'control' of a place is to have the authority to manage, direct, superintend, restrict, or regulate."

CONCLUSION

Therefore, in view of the foregoing statutory authority and decisions, especially Section 10272, supra, which

provides that the Permanent Seat of Government shall contract for and superintend the repair and construction of any public buildings and improvements that may be required by law at the permanent seat of government, it is the opinion of this department that the Commissioner of the Board of Permanent Seat of Government is the proper authorized person to contract for labor to paint the interior of the State Capitol; that if said paint is to be purchased and, unless it comes within the exceptions contained in Section 14593, supra, or a contract is entered into wherein the Board of Permanent Seat of Government through its Commissioner, hires a contractor for a turnkey job, the Purchasing Agent is the authorized person to purchase said paint.

Respectfully submitted,

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Assistant Attorney-General

ARH:CP

APPROVED:

ROY McKITTRICK
Attorney-General