

**STATE PURCHASING  
AUTOMOBILES:**

AGENT: RE: The State Purchasing Agent has the discretion of selling goods to the highest and best bidder, if the highest bids are identical he has the discretion of determining which constitutes the best bid.

July 3, 1946



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Mr. William Smith  
State Purchasing Agent  
Jefferson City, Missouri.

Dear Mr. Smith:

This will acknowledge receipt of your letter of June 24, 1946, in which you request an opinion of this department as follows:

"A number of field employees of the Conservation Commission have been driving state-owned cars. The Conservation Commission has decided that inasmuch as automobiles are scarce that they would prefer that these men drive their own cars on a mileage basis.

"They are stressing upon the idea that this Department should sell the state-owned cars at the top ceiling price as established by the OPA to these employees.

"I would like to have an opinion as to whether or not this is possible under the law inasmuch as the law states that this Department is to receive bids and sell to the highest bidder. Of course, the government laws would prohibit me from selling cars above ceiling price established by the OPA."

Section 69 of S.C.S.S.B. 297, passed by the 63rd General Assembly and approved by the Governor carries this provision relative to the power of the State Purchasing Agent:

"\* \* \*He shall also have power, subject to the same provisions as for bids for purchases, to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof.\* \*"

Section 65 of the same Bill provides, in part, as follows:

"Section 65. All purchases shall be based on competitive bids. On any purchase where the estimated expenditure shall be two thousand dollars (\$2,000.00) or over, the purchasing agent shall advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders at least five days before bids for such purchases are to be opened. On purchases where the estimated expenditure is less than two thousand dollars (\$2,000.00) bids shall be secured without advertising. In all cases, the purchasing agent shall post a notice of the proposed purchase on a bulletin board in his office. He shall also on all purchases estimated to exceed two thousand dollars (\$2,000.00) solicit bids by mail from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the purchasing agent so as to reach such office before the time set for opening bids. The contract shall be let to the lowest and best bidder. The purchasing agent shall have the right to reject any or all bids and advertise for new bids, or, with the approval of the governor, purchase the required supplies on the open market if they can be so purchased at a better price.\* \* \*"

Your letter refers to the ceiling price on automobiles established by the Office of Price Administration. Recent developments in Washington, D. C. have resulted in the abolition, at least temporarily, of the Office of Price Administration. Due to this fact we will attempt to answer your letter both on the basis of the situation as it exists now and upon the situation which will obtain if the OPA is revived.

The above quoted sections of Senate Bill No. 297 provide that the same rules govern the purchase of goods by the State Purchasing Agent which apply to the sale of goods by him. Therefore, under the terms of Section 65 of Senate Bill No. 297, the Purchasing Agent is required to obtain bids on all supplies sold by him. Where the sale is estimated to be in the amount of two thousand dollars (\$2,000.00) or more, the Purchasing Agent must advertise for bids. Where sales are less than two thousand dollars (\$2,000.00) the Purchasing Agent need not advertise. By the terms of that section the contract of sale must be let to the highest and best bidder and the Purchasing Agent is given the discretionary power to revoke any or all bids. Applying these statutory provisions to the situation when there is no ceiling price on the sale of automobiles, it

follows that the Purchasing Agent should sell to the highest bidder if this bidder is a reliable buyer. In other words, if the buyer is a reliable person the highest bid would be the best bid. Where the bids are for the same amount of money, the Purchasing Agent has the discretion of determining which bid shall be acceptable. Therefore, it is our opinion that the situation regarding the Conservation Commission automobiles should be handled in the same manner as other sales are handled by the State Purchasing Agent, the latter using his discretion as to what is the highest and best bid.

Under an OPA ceiling price, the automobiles could not be sold for a price exceeding that ceiling. Therefore, if the employees of the Conservation Commission offered the ceiling price, it would be the duty of the State Purchasing Agent to determine whether their bids were the best bids and to award the contract of sale to the persons offering the ceiling price whose bids he felt were the best bids. In other words, it would be the duty of the State Purchasing Agent to determine which bid was the best as between those persons offering the ceiling price for the automobiles.

#### CONCLUSION

It is, therefore, the opinion of this department that if the OPA is not in force at the time the automobiles are sold the State Purchasing Agent should proceed to determine the highest and best bidders and to award the sales to the bidders offering the same, and that if the OPA is in force the State Purchasing Agent should determine which bids are the best bids as between those persons offering the ceiling price for the automobiles.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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