

LAND RECLAMATION COMMISSION:  
STATE CONTRACTS:  
STATE PURCHASES:

The Land Reclamation Commission in implementing the Surface Coal Mining Law, Sections 444.800 to 444.940, RSMo Supp. 1981, is subject to requirements of the Purchasing Law, Chapter 34, RSMo 1978.

December 31, 1981

OPINION NO. 128  
(corrected)

Mr. Stephen C. Bradford  
Commissioner of Administration  
Office of Administration  
P. O. Box 809  
Jefferson City, Missouri 65102



Dear Mr. Bradford:

This is in response to your request for an opinion as follows:

Can the Land Reclamation Commission pursuant to Section 444.810, subsection (9) Cum. Supp. RSMo 1980 [sic] wherein it is authorized to "contract for such professional and technical services as necessary" in implementing the Surface Coal Mining Law, bid, award contracts, and contract for such professional and technical services without being subject to Chapter 34, RSMo 1978?

Chapter 34, RSMo 1978, contains the Missouri purchasing law. Section 34.030, RSMo 1978, sets out the types of purchases which must be competitively bid under Chapter 34:

The commissioner of administration shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided. The commissioner of administration 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. (Emphasis added.)

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Section 34.010 provides the following definitions:

1. "Contractual services" shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service.
2. 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, except the legislative and judicial departments.
3. The term "purchase" as used in this chapter shall include the rental or leasing of any equipment, articles or things.
4. 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.

It is clear that the Land Reclamation Commission falls within the above definition of "department." It is also clear that professional and technical services are contractual services which fall within the statutory definition of "supplies."

In rendering this opinion, we are aware of Section 444.810, RSMo Supp. 1981, which provides as follows;

The commission may:

\* \* \*

(9) Retain, employ, provide for, and compensate, within the limits of appropriations made for that purpose, such consultants, . . . as may be necessary to carry out the provisions of [the Surface Coal Mining Law] . . . ; and when appropriate, contract for such professional and technical services as necessary; . . .

Previously, in our Opinion Letter No. 22, Muckler, July 24, 1980, we concluded that:

professions and services other than those of physicians, attorneys and such expert witnesses are subject to the requirements of the purchasing law.

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We further note that Section 34.030, RSMo 1978, provides:

The commissioner of administration shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided. . . . (Emphasis added.)

As there has been no amendment to Chapter 34 which would excuse the Land Reclamation Commission from its requirements, we believe that Opinion Letter No. 22, Muckler, supra, remains a correct interpretation of the law of Missouri. It is, therefore, our opinion that Chapter 34 is a clear, unambiguous, legislative mandate that the purchasing of supplies for state departments be made by the commissioner of administration.

Section 444.810.9 notwithstanding, we believe that the Land Reclamation Commission must purchase its supplies, which include professional and technical services, under the provisions of Chapter 34. However, this conclusion does not require the commissioner of administration to purchase professional and technical services for the Land Reclamation Commission. Section 34.100, RSMo 1978, allows the commissioner of administration to delegate the purchasing of supplies of a technical nature to the department:

The commissioner of administration 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 commissioner of administration together with all bids received and prices paid. (Emphasis added.)

We believe that the phrase "supplies of a technical nature" includes professional services required by the Land Reclamation Commission to carry out its duties under the Surface Coal Mining Law.

Since your question contemplates a bidding procedure by the Land Reclamation Commission prior to an award for a contract for professional and technical services, an authorization by the commissioner of administration to the Land Reclamation Commission under Section 34.100 to purchase professional and technical services directly will maintain the integrity of Chapter 34 and allow the Land Reclamation Commission the flexibility it needs to carry out its mission effectively.

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CONCLUSION

It is, therefore, the opinion of this office that the Land Reclamation Commission, in implementing the Surface Coal Mining Law, Sections 444.800 to 444.940, RSMo Supp. 1981, is subject to requirements of the Purchasing Law, Chapter 34, RSMo 1978.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in black ink and is positioned above the printed name.

JOHN ASHCROFT  
Attorney General