

1452.

DEPARTMENT OF LIQUOR—MAY CONTRACT FOR PURCHASES AND SERVICES RENDERED TO THE DEPARTMENT, WHEN—STATE PURCHASING AGENT—DEPARTMENT OF FINANCE.

*SYLLABUS:*

*The Department of Liquor Control of the State of Ohio has exclusive power to make purchases of merchandise sold in the state liquor stores and to contract for services rendered to the Department, but must purchase equipment, materials and supplies which are included within the classes enumerated on the list published by the State Purchasing Agent, through the Department of Finance, except in such cases where the Department of Finance issues releases.*

COLUMBUS, OHIO, November 12, 1937.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: I have your letter of recent date as follows:

“An examination of the records and accounts of the Department of Liquor Control, State of Ohio, discloses that the department, with few exceptions, has established the practice of contracting for the purchase of services, equipment and supplies necessary for the operation and maintenance of the department, as well as merchandise sold without regard for the Department of Finance and the procedure prescribed by the Department of Finance.

We therefore request your formal opinion on the following questions:

Does the Department of Liquor Control, State of Ohio, have authority, through its Director and/or Board of Liquor Control, to make contracts for the purchase of, or obligate the Department and/or the State of Ohio, for:

(a) Services, equipment and supplies necessary for the operation and maintenance of the State Liquor Stores and the merchandise sold therein:

(b) Other equipment, services, materials and supplies, including printing matter and other items which Section 154-37 of the General Code of Ohio requires the various state departments purchase through the Department of Finance Division of Printing and Purchases, all of which equipment,

materials and supplies are necessary for the maintenance of the Department in the performance of all the duties conferred upon the Department by virtue of the Liquor Control Act (Sections 6064-1, et seq.), and other statutes pertaining to the Department.

It is understood that by 'Department of Liquor Control' we mean the Director, the Board and any and all divisions coming under them, as well as the definition given for the Department in the Liquor Control Act."

The powers of the Department of Liquor Control relative to the making of purchases and contracting for services are contained in the following passages in the Liquor Control Act.

Section 6064-8:

"The department of liquor control shall have all the powers and duties vested in and imposed upon a department. In addition thereto, the department shall have and exercise the following powers:

\* \* \* \* \* \* \* \*

3. To put into operation, manage and control a system of state liquor stores for the sale of spirituous liquor at retail and to holders of permits authorizing the sale of such liquor, to be established throughout the state as hereinafter provided; and thereby and by means of such manufacturing plants, distributing and bottling plants, warehouses and other facilities \* \* \*; and for such purposes to manufacture, *buy, import*, possess, and sell *spirituous liquors* in the manner provided in the liquor control act and in the regulations adopted and promulgated by the board pursuant to the liquor control act, \* \* \*; *to purchase such equipment* as may be required to effectuate the purposes of the liquor control act; \* \* \*.

\* \* \* \* \* \* \* \*

9. All other powers expressly or by necessary implication conferred upon the department by any provisions of the liquor control act; and all powers necessary and proper for the exercise or discharge of any power, duty or function expressly conferred or imposed upon the department by any provision of the liquor control act. \* \* \*"  
(Italics the writer's.)

From these provisions it is clear that the legislature has conferred upon the Department the express powers to make purchases



powers and duties shall be construed as vested in the department of finance.”

It is provided in the second partgraph of Section 154-37, General Code, that “the department of finance shall succeed to and exercise all powers of the state purchasing agent in the office of the Secretary of State and the Secretary of State and Auditor of State with respect to the purchase of supplies and equipment required for the use and maintenance of the state officers, boards and commissions \* \* \*.” The powers and duties of the State purchasing agent and of the Secretary of State and Auditor of State relative to the State Purchasing Department are set forth in Sections 196-4 to 196-17, General Code. The pertinent parts of these statutes are as follows:

Section 196-4:

“The secretary of state and the auditor of state (under The terms of Section 154-37 this is all now under the Department of Finance) shall, on or before the first day of July, 1917, and thereafter whenever they deem it necessary, meet with the state purchasing agent and determine what supplies and equipment, required for the use and maintenance of the departments and offices of all elective and appointive state officers, boards and commissions, shall be purchased and furnished by the state purchasing department. \* \* \*” (Parenthetical matter ours.)

Section 196-5:

“On or before the first day of July, 1917, the state purchasing agent shall cause to be printed and furnished to each elective and appointive officer, board and commission of the state, lists of the supplies and equipment so determined to be purchased and furnished by the state purchasing department, and thereafter, whenever any change or addition is made to such list, he shall notify each such officer, board and commission thereof. Such lists and all notices of changes or addition thereto shall indicate the time when the purchasing department will be prepared to furnish each item contained thereon.”

Section 196-6:

“From and after the day when the state purchasing agent will be prepared to furnish any supply or equipment

it shall be unlawful for any elective or appointive state officer, board or commission, other than those excepted in section 4 of this act, to procure or purchase any such supply or equipment other than from the state purchasing department; provided, however, that whenever the auditor of state and secretary of state (these functions now are performed by the Department of Finance under Section 154-37) shall decide that it is impractical for any officer, board or commission to obtain any such supply or equipment from the state purchasing department they may issue such officer, board or commission a release and permit to secure such supply or equipment other than from the state purchasing department. Such release and permit shall specify the item or items of supply or equipment, the office or institution to which the release and permit shall apply, and the time during which such release or permit shall be operative, and may specify the quantity of each item of supply or equipment so to be procured by such officer, board or commission, and shall also state the reason for its issuance. \* \* \*” (Parenthetical matter ours.)

Section 196-7:

“All supplies and equipment so authorized to be purchased and furnished by the state purchasing department shall be purchased by the state purchasing agent through competitive bidding, except \* \* \* where the amount of such purchase is less than one hundred fifty dollars. In cases where purchases are required to be made by competitive bidding, notice of the proposed purchase shall be given in the following manner; \* \* \*”

A review of these provisions together with the other sections relating to the State Purchasing Department reveals a clear intention on the part of the legislature that the provisions of Sections 196-4 to 196-17, General Code, shall only relate to the purchase of supplies and equipment and do not pertain to the purchase of other things, as for example, the merchandise sold by the state liquor stores, nor do they relate to contracting for services. Therefore, under the present state of law there is little doubt but that the Department of Liquor Control has the sole authority to make purchases of the merchandise sold in the state liquor stores and to contract for such services as may be necessary to carry out powers and duties conferred upon the Department. However, it is my opinion that if any

items of equipment or supplies are on the printed list furnished by the State Purchasing Department in the Department of Finance, the Department of Liquor Control is prohibited from purchasing same under the provisions of Section 196-6, supra, unless the Department of Finance issues a release for the particular purchases.

In specific answer to your questions, therefore, it is my opinion that the Department of Liquor Control of the State of Ohio has exclusive power to make purchases of merchandise sold in the state liquor stores and to contract for services rendered to the Department, but that it must purchase equipment, materials and supplies which are included within the classes enumerated on the list published by the State Purchasing Agent, through the Department of Finance, except in such cases where the Department of Finance issues releases.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1453.

APPROVAL—BONDS CITY OF TOLEDO, LUCAS COUNTY,  
OHIO, \$15,000.00.

COLUMBUS, OHIO, November 12, 1937.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

*H. S. D.*

RE: Bonds of City of Toledo, Lucas County, Ohio,  
\$15,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated March 1, 1927. The transcript relative to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of June 11, 1935, being Opinion No. 4331.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*