

81.

STATE PURCHASING DEPARTMENT—PRINTING CONTRACT  
—DEPARTMENT OF LIQUOR CONTROL—NO AUTHORITY TO PURCHASE PRINTED MATTER AND FORMS AT COMPETITIVE BIDDING — EXCEPTION — RELEASE AND PERMIT UNDER AUTHORITY, DEPARTMENT OF FINANCE—SECTIONS 196-5, 196-6 G. C.

*SYLLABUS:*

*The Department of Liquor Control has no authority to purchase printed matter and forms used by it if said printed matter and forms are set forth in the list furnished by the Department of Finance under authority of Section 196-5, General Code, unless the Department of Finance issues a release and permit as provided in Section 196-6, General Code.*

COLUMBUS, OHIO, February 4, 1939.

HON. JACOB S. TAYLOR, *Director, Department of Liquor Control, State of Ohio, Columbus, Ohio.*

DEAR SIR: This will acknowledge your letter of recent date as follows:

“I respectfully request that you render me a formal opinion on the question as to whether the Department of Liquor Control is permitted to purchase its printing by competitive bids or whether it is subject to the general terms of the State printing contract.

This is an important matter to us and we are extremely desirous of having it settled promptly inasmuch as it is our experience that we can save considerable sums of money by purchasing this printing under competitive bids. We have an example of such a case at the present moment where the lowest bid on a large quantity of store customers' order forms is approximately \$7,000.00 where the last cost for a similar quantity purchased through Purchasing and Printing under the State contract was approximately \$11,000.00.”

The correct answer to your question depends upon the proper construction of several sections of the General Code. Section 6064-8, General Code, which is part of the Liquor Control Act, provide in part:

“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:

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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 as it may deem expedient in connection therewith, to establish and maintain a state monopoly of the distribution of liquor and the sale thereof in packages or containers; and for such purpose 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 lease or in any manner except by purchase, acquire the use of any land or building required for any of such purposes; *to purchase such equipment as may be required to effectuate the purposes of the liquor control act.*

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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.)

Standing alone it would seem that the portion of the section above quoted grants to the Department of Liquor Control the power, among other things, to purchase such printed matter as is required to effectuate the purposes of the act or is necessary and proper for the exercise of the powers, duties and functions conferred upon it by the act.

However, there are two other acts of the Legislature, which were passed many years before the Liquor Control Act, which must be considered. The first of these is the act creating the State Purchasing Department which was enacted in 1917, and which was designated as Sections 196-1 to 196-18, both inclusive, General Code. This act, inter alia, created in the Department of the Secretary of State a State Purchasing Department and provided that the Secretary of State should appoint a State Purchasing Agent. It was further provided that the Secretary of State and the Auditor of State should, on or before the first day of July, 1917, and thereafter whenever they deemed it necessary, meet with the State Purchasing Agent, and determine what supplies and equipment required for the use of various state departments and offices should be purchased and furnished by the State Purchasing Department. Sections 196-5 and 196-6, General Code, are quoted in full as follows:

*Section 196-5, General Code:*

"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 board and commission thereof. Such lists and all notices of change or addition thereto shall indicate the time when the purchasing department will be prepared to furnish each item contained therein."

*Section 196-6, General Code:*

"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 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 to 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 and 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.* Such release and permit shall be in triplicate, one copy to be filed with the officer, board or commission to whom it is issued, one copy to be filed with the auditor of state, and one copy to be filed with the state purchasing department." (Italics the writer's.)

In 1921 the sections creating the State Purchasing Department and providing for the appointment of a State Purchasing Agent were repealed. The office of State Purchasing Agent was abolished at the same time by Section 154-24, General Code. At the same time Section 154-37, General Code, was enacted which is in part as follows:

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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 state offices, boards and commissions, the commissioner of public printing and the supervision of public printing and shall exercise all powers and perform all duties as to purchases heretofore vested in the Ohio board of administration under the provisions of section 1849 of the General Code. Whenever powers are conferred or duties imposed upon any of such departments, offices or officers with respect to the matters and things herein mentioned, such powers and duties shall be construed as vested in the department of finance. In addition to the powers so transferred to it, the department of finance shall have power to purchase all other supplies, material and equipment for the use of the state departments, offices and institutions, excepting the military department and institutions administered by boards of trustees, and, excepting as to such department and institutions, to make contracts for and superintend the telephone and telegraph service for the state departments, offices and institutions. So far as practicable the department of finance shall make all purchases under the authority of this chapter from the department of public welfare in the exercise of the functions of said department in the management of state institutions."

When all of the above quoted statutes are construed together, it seems clear that the legislative intent was that the purchase of all supplies and equipment which are enumerated in the list provided for in Section 196-5, supra, for the various state departments should be made by the Department of Finance, except as to such departments as are specifically exempted by law or except where a release and permit is issued as provided in Section 196-6, supra. It should be noted that there is no statute exempting the Department of Liquor Control from the requirements of the laws relating to the purchase of supplies and equipment.

On November 12, 1937, the then Attorney General, in response to a question similar to the one put by you, although somewhat broader in its scope, reached the following conclusion:

"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."

I am, therefore, of the opinion that the Department of Liquor Control is not permitted to purchase printed matter or forms for its use which are enumerated in the list, or some change or addition thereto, furnished to the department pursuant to Section 196-5, supra, except in cases where a release and permit provided for in Section 196-6, supra, has been issued by the Department of Finance, and then only as to items set forth in said release and permit.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*