

2490.

## APPROVAL, REFUNDING BONDS OF KENMORE CITY SCHOOL DISTRICT IN AMOUNT OF \$38,000.

COLUMBUS, OHIO, October 18, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

2491.

## ADMINISTRATIVE CODE—PROCEDURE FOR PURCHASE OF SUPPLIES.

COLUMBUS, OHIO, October 18, 1921.

*Department of Finance, HON. FLOYD E. WAITE, Director, Columbus, Ohio.*

DEAR SIR:—In your letter of October 6th you request advice as to the formal procedure which should now be followed by the division of purchases and printing, department of finance, in the purchasing of supplies, requesting information as to which of the old laws still obtain and which have been repealed with reference to this division.

It is believed that the following statement will suffice as a guide for your department:

It is understood that you wish to be advised as to the procedure to be followed in the purchasing of supplies, as distinguished from the procedure to be followed in the securing of state printing. No reference will be made in this opinion, therefore, to the function of the division in so far as it relates to state printing.

Section 154-37 of the General Code, being a part of the Administrative Code, provides as follows:

“The department of finance shall succeed to and exercise all powers and perform all duties vested by sections one thousand eight hundred and forty-six and one thousand eight hundred and forty-seven of the General Code jointly in the secretary of state and the auditor of state, which said powers are hereby transferred to and vested in said department.

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 officers, boards and commissions, the commissioners of public printing and the supervisor 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 one thousand eight hundred and forty-nine of the General Code. Wherever 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 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."

So far as the purchase of supplies is concerned, the department of finance thus becomes invested, by transfer, with two distinct functions:

"(1) The purchase of supplies and equipment required for the use and maintenance of state officers, boards and commissions;" and

"(2) All duties as to purchases heretofore vested in the Ohio board of administration under the provisions of section one thousand eight hundred and forty-nine of the General Code."

In the third place, the department of finance acquires the additional 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."

The phrase "departments, offices and institutions" is defined in section 154-2 to include "every organized body, office and agency established by the constitution and laws of the state for the exercise of any function of the state government."

It is evident, therefore, that three kinds of purchases are to be made by the department of finance, and presumably through the division of purchases and printing. These three kinds of purchases may be described as those which formerly were made through the state purchasing agent in the secretary of state's office; those which formerly were made through the board of administration for state institutions; and those which formerly were made through the several offices and departments without the intervention of the state purchasing agent.

The general principle which applies is that each one of these classes of purchases is to be made in accordance with the law which has always governed it, excepting that it is now to be made by and through the department of finance, and not through the agency which formerly conducted the purchasing. This general rule is subject to a few exceptions, some of which will be pointed out in the subsequent parts of this opinion.

The three kinds of purchases referred to will be considered separately.

(1) Supplies and equipment for the use and maintenance of state officers, boards and commissions:

The statutes which govern the purchase of such supplies are sections 196-4 to 196-17, inclusive, of the General Code, with the exception of section 196-16, which has been repealed.

The first of these sections requires a determination as to "what supplies

and equipment \* \* \* shall be purchased and furnished by the state purchasing department." This determination was formerly made by the secretary of state and auditor of state, and section 196-4 still provides that it shall be so made; but this function reposing in the secretary of state and auditor of state has been expressly transferred to the department of finance by the first sentence of the second paragraph of section 154-37; so that now the department of finance must determine what supplies and equipment it will purchase under the provisions of this group of sections. It is to be observed that section 196-4 does not apply to supplies for boards of state supervisors and inspectors of elections, courts of appeals, courts of common pleas, the supreme court, institutions under the direction of the board of administration, the Ohio national guard and the agricultural experiment stations, nor does it apply to the educational institutions or the commissioners of public printing. It is to be observed further that it applies only to the purchase of supplies and equipment; it does not extend to the purchase of materials, machinery, etc., such as are required in the department of highways and public works, for example.

Section 196-5 requires the state purchasing agent (now the department of finance) to keep and furnish to the various officers, boards and commissions list of the supplies and equipment which it is determined that he shall purchase in the manner outlined in these sections.

Section 196-6 authorizes the auditor of state and secretary of state to exempt from the requirement of purchase through the purchasing department any case in which they decide that "it is impractical for any officer, board or commission to obtain any such supply or equipment from the state purchasing department." This function, if it still exists at all, is now reposed in the department of finance; but in view of certain of the provisions of section 154-37 it is believed that there is now strong reason for holding that this section is repealed by implication, or at least so far affected as to give to the release referred to in the section the effect merely of involving the third class of powers of the department of finance. That is to say, if a listed article cannot, in the judgment of the department of finance, be furnished in the manner provided by sections 196-4 et seq. of the General Code, the only consequence of such a finding is that it shall be purchased through the department of finance in the manner hereinafter outlined in dealing with the third class of purchases to be made by that department. The clear intent of the Administrative Code is that all purchases, excepting for the military department and institutions under control of boards of trustees, should be made through the department of finance.

Sections 196-7, 196-8 and 196-9 provide as follows:

"Sec. 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 such supply or equipment is purchased pursuant to section 1847 of the General Code. In cases where purchases are required to be made by competitive bidding, notice of the proposed purchase shall be given in the following manner: The state purchasing agent shall advertise such competitive bidding by notice sent by registered mail to competing persons, firms or corporations producing or dealing in such supplies or equipment. Such notice shall state the time and place where bids will be opened, the conditions under which bids will be received, the terms of the proposed purchase, and an itemized list of the supplies and equipment to be purchased and the estimated quanti-

ties thereof. The mailing of such notices shall be at least fifteen days preceding the day when such bids will be opened, and the postoffice receipts of the mailing of such notices shall be filed and preserved in the office of the state purchasing agent. The state purchasing agent shall also maintain in a public place in his office a bulletin board upon which he shall post and maintain a copy of such notice for at least fifteen days preceding the day of the opening of such bids."

"Sec. 196-8. Any person, firm or corporation may have its name and address, or the name and address of an agent listed with the state purchasing agent by sending to the state purchasing agent such name and address, together with a list of the supplies or equipment produced or dealt in by such person, firm or corporation, with a request for such listing, and at the same time may transmit a copy of such request to the auditor of state for filing in his department. Whenever such name and address together with a list of the supplies and equipment produced or dealt in is so listed it shall be the duty of the state purchasing agent to send notice, as hereinbefore provided, to such name and address whenever supplies or equipment so listed in such requests are to be purchased, and failure to post such notice or to send such notice to each and every person, firm or corporation, as hereinbefore provided, shall invalidate all proceedings theretofore had and any contract entered into pursuant to such proceedings."

"Sec. 196-9. The state purchasing agent may prescribe such conditions under which bids will be received and terms of the proposed purchase as he deems necessary, provided, however, that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition, and further provided that bidders may bid upon all or any item of the supplies and equipment listed in such notice."

These sections must be followed to the letter by the department of finance in purchasing the supplies and equipment which it determines to purchase and have on hand or in stock, as it were, in the manner contemplated by the laws governing the state purchasing agent formerly in the office of the secretary of state. They do not apply to cases in which the department has not determined in advance that it is ready to furnish supplies and equipment as provided in section 196-4.

In order to understand fully the machinery of purchasing under the sections which are now being considered, reference must be made to section 196-15 of the General Code, which provides as follows:

"Sec. 196-15. All officers, boards or commissions required to secure any supplies or equipment from the state purchasing department shall make requisition therefor in the manner and upon forms prescribed by the auditor of state. Such supplies or equipment shall be furnished by the state purchasing department at the actual cost thereof to the purchasing department without any additions however for the administrative expenses of such department. On the last day of each month the state purchasing agent shall make out to each officer, board and commission a statement of the supplies and equipment furnished such officer, board or commission during such month, and the prices thereof, and also all credits for supplies and equipment turned over to the exchange department. Thereupon such officer, board or commission shall issue a voucher to the auditor of state for the sum due the state purchasing department, and upon presentation of such

voucher the auditor of state shall issue his warrant for the sum thereof. The money so paid to the state purchasing department shall be deposited in the state treasury to the credit of the supply purchasing fund."

Reading all the sections so far quoted together, it is clear that the scheme contemplated by them is that the state purchasing agent shall maintain a stock of supplies and equipment from which requisitions can be filled from time to time as made by the state departments, paid for monthly by voucher drawn on departmental appropriations, paid to the state purchasing agent and by him paid into the state treasury to the credit of his rotary fund; and in addition to such supplies and equipment as may be kept in stock, such other items of supplies and equipment, the amount and time, use and delivery of which for a year's supply or the supply for any other period may be practically determined. While the function has been taken over by the department of finance, its nature is in nowise changed; it still commences with a determination of what supplies shall be kept on hand to be furnished on requisition. The next step is the purchase of these supplies for the stock to be so kept on hand, and this step is governed by the procedural requirements and formalities outlined in sections 196-8 and 196-9, above quoted. The next step is the furnishing of the supplies to the department on requisition as outlined in section 196-15, above quoted.

From the foregoing it is clear that if supplies are to be purchased, kept in stock and issued on requisition in the manner provided by section 196-15 of the General Code, these provisions of sections 196-7 to 196-9 must be complied with in their purchase. But if purchasing is not done with a view to maintaining a stock, but is simply a casual purchase made outside the list of supplies determined upon under section 196-4 of the General Code, these restrictive provisions do not apply, though the department of finance now has the power and it is its duty to make such purchases under and by virtue of the next to the last clause of section 154-37 of the General Code.

Under section 196-10 the state purchasing agent (now the department of finance) may require that all bids be accompanied by a bond. This same section requires sealed copies of each bid to be filed in the office of the auditor of state, and specifies that all bids shall be publicly opened in the office of the secretary of state. The effect of the Administrative Code upon this section seems to be as follows: The copies must still be filed in the office of the auditor of state, but they are to be opened, not in the office of the secretary of state, but in the office of the department of finance.

In passing it may be stated that the function of inspection and condemnation reposed by section 196-13 in the secretary of state and auditor of state is now transferred to the department of finance.

Summing up, the procedure under section 196-4 et seq. General Code is as follows:

The division of purchases and printing should decide what commodities in the nature of supplies and equipment it will keep on hand, to be delivered on requisition to the various state officers, boards and commissions mentioned in section 196-4. When this list is established, or as it is modified from time to time, commodities which are so listed can only be purchased in the way above outlined and all the formalities therein prescribed must be complied with. But this does not mean that all purchases made by the department of finance, nor even that all purchases made by the department of finance for the departments served by this list, must be made subject to such requirements and formalities.

(2) Purchases for the state institutions under the control of the department of public welfare:

Section 1849, General Code, governs these purchases, though the functions therein described are now vested in the department of finance. It provides as follows:

"The board is empowered and required to purchase all supplies needed for the proper support and maintenance of said institutions, by competitive bidding under such rules as the board may adopt. All bids shall be publicly opened on the day and hour and at the place specified in the advertisement. The contract shall be awarded to the lowest responsible bidder, preference shall be given to bidders in localities wherein such institution is located, if the price is fair and reasonable and not greater than the usual price; but bids not meeting the specifications shall be rejected. The board may require such security as it may deem proper to accompany the bids and shall fix the security to be given by the contractor. It may reject any or all bids and secure new bids, if for any reason it is deemed for the best interest of the state to do so, but it may authorize the managing officer of any institution to purchase perishable goods and supplies for use in cases of emergency, in which cases the managing officer of the institution requiring the same shall certify such fact in writing and the board shall record the reasons for such purchase."

It will be observed that under this section there are no such detailed requirements as obtain under the other sections referred to. In purchasing supplies needed for the proper support and maintenance of the institutions under the control of the department of public welfare, the department of finance may establish its own rules; it need comply only with the following requirements:

- (1) Competitive bidding.
- (2) Public opening of bids on the day and hour and at the place specified in the advertisement.
- (3) Award of the contract to the lowest responsible bidder, preference being given to bidders in localities wherein such institution for which the purchase is made is located, if the price is fair and reasonable and not greater than the usual price.
- (4) Compliance of the bids with the specifications.

Special attention is called to the requirement that bids must be opened at the time and place specified in the advertisement. The statute does not require any particular kind of advertising, but this provision certainly implies that some advertising shall be had. Technically, any adequate publicity is sufficient, but if the department has available funds it would be well to avoid all questions by advertising in a newspaper of general circulation in the place where the market is to be found.

It is to be noted that the department of finance

"may authorize the managing officer of any institution to purchase perishable goods and supplies for use in cases of emergency, in which cases the managing officer of the institution requiring the same shall certify such fact in writing and the board (department of finance) shall record the reasons for such purchase."

It will thus be seen that the requirements in cases of purchases for the

institutions under the control of the department of public welfare are governed by rules entirely different from those governing purchases for other purposes.

In this connection, however, it should be observed that the department of public welfare has functions somewhat broader than those of the old board of administration, in that, for example, it comprises the functions of the former board of state charities as well as the functions of the former board of administration. It is only purchases for *institutions* that are governed by section 1849; other purchases for the department of public welfare come under the rules above outlined under the first heading, or under the rules presently to be outlined under the third heading, as the case may be.

(3) By virtue of the general sentence conferring additional powers upon the department of finance, and found in section 154-37 of the General Code, the department of finance has authority to purchase "all other supplies, *material* and equipment;" that is to say, supplies and equipment not listed by the department of finance as regularly on hand are still to be purchased through it by the various state departments, excepting the military department and the institutions under the control of boards of trustees. Moreover, all material for the use of any state department is now to be purchased through the department of finance. In the event, for example, that the department of highways and public works purchases material, that purchase must be made through the department of finance.

The general principle which governs these purchases may be stated as follows:

Whatever formalities were required of the department formerly possessing the function of purchase with respect to such commodities now apply to and govern the department of finance in making the purchase. That is to say, if the purchase of supplies, material or equipment for a given state purpose was required to be made upon any given kind of competitive bidding, by a statute which applies in terms to the state department exercising the general function, these requirements would apply likewise to the department of finance in the exercise of its function of purchase. See section 154-24, which, it is believed, is broad enough to produce this result. No specific provision of this kind has been found, but the department is advised to assure itself, in case it is requested to make a purchase not coming within the scope of the other two classes above outlined, that that particular purchase is not governed by some such statutory requirement.

Even if no permanent statute imposes any requirement as to procedure in such cases, however, attention should be called to a certain provision which the legislature has been in the habit of inserting in its appropriation bills. Reference is made to section 6 of the appropriation bill of 1921 (109 Ohio Laws, p. 502), which provides as follows:

"If the order and invoice drawn against any appropriation herein is made for labor and material furnished or for commodities purchased, it shall show that the same was furnished or purchased pursuant to competitive bidding and that the lowest bidder was awarded the contract, unless the controlling board shall have authorized the furnishing of such labor or material or the purchase of such commodity without competitive bidding. \* \* \*"

This section requires the auditor of state to satisfy himself that any purchase of material or commodity was made pursuant to competitive bidding and that the *lowest bidder* was awarded the contract, unless the controlling board

shall have dispensed with competitive bidding. No appropriation account governed by this section can be lawfully expended in any other way, so that even in cases coming under the general power now under discussion the department of finance should secure competitive bids and let the contract to the lowest bidder, or else have competitive bidding dispensed with by action of the controlling board. The method of establishing the fact of competition is one which is to be prescribed by the auditor of state.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

---

2492.

COUNTY DETENTION HOME—BOARD OF EDUCATION HAS AUTHORITY TO FORBID ATTENDANCE OF INMATES OF HOME AT PUBLIC SCHOOLS OF DISTRICT.

*The board of education of a school district, in which is located a county detention home, established in conformity with section 1670 G. C., has authority to forbid the attendance of the inmates of the county detention home at the public schools of the district, since section 1670 G. C. provides that the superintendent and matron in a county detention home shall be persons "qualified as teachers of children."*

COLUMBUS, OHIO, October 20, 1921.

HON. H. A. BURGESS, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date, signed by the assistant prosecuting attorney of your county, requesting the opinion of this department upon the following question:

"We have in this county a detention home established in conformity with section 1670, General Code. This home is located in Warren township. There are several children of school age in the detention home and they have been attending the Warren township school. The board of education is now attempting to forbid the attendance of these children on the ground that they are delinquent children.

We desire your opinion as to whether a school board can reject children on this ground."

Section 1670 General Code, as amended in 103 O. L., page 864, reads as follows:

"Upon the advice and recommendation of the judge exercising the jurisdiction provided herein, the county commissioners shall provide by purchase or lease, a place to be known as a 'detention home' within a convenient distance of the court house, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent or neglected minors under the age of eighteen years may be detained until final disposition, which place shall be maintained by the county as in other like cases. In counties having a population in excess of forty thousand, the judge may appoint a