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UTILITIES COMMISSION OF OHIO, PUBLIC—REQUISITION SHOULD BE MADE ON SUPERINTENDENT OF PURCHASES AND PRINTING TO PROCURE NECESSARY BOOKS, MAPS, CHARTS, STATIONERY, INSTRUMENTS, OFFICE FURNITURE AND APPLIANCES—SECTION 154-37 G. C.

SYLLABUS:

When the public utilities commission desires to procure necessary books, maps, charts, stationery, instruments, office furniture and appliances, it should make requisition upon the superintendent of purchases and printing, whose duty it is to purchase the same in accordance with the powers vested in him by Section 154-37 of the General Code.

Columbus, Ohio, September 1, 1948

Public Utilities Commission of Ohio
Columbus, Ohio.

Gentlemen:

I have before me your request for my opinion reading as follows:

“Under Section 495 of the General Code of Ohio, the Public Utilities Commission of Ohio is authorized ‘to procure all necessary books, maps, charts—etc., necessary for the proper administration of the affairs of said Commission as provided in this chapter and the same shall be audited and paid as other expenses are audited and paid.’

“The question arising is whether or not the Public Utilities Commission has sufficient authority under this section to make purchases necessary in the administration of its duties otherwise than through the Purchasing Department of the State of Ohio. We therefore request an opinion from the Attorney General of Ohio, interpreting the meaning of Section 495 relative to the powers of the Public Utilities Commission for the expenditure of money covering the articles specifically set out in the statute. Would you please advise us whether or not this Commission must secure the approval of the State Purchasing Agent before making these purchases.

“We are cognizant of the opinion rendered March 31, 1913 by the Attorney General’s Office relative to the purchase of forms from the Interstate Commerce Commission. It is our desire, however, to have the other subject matters covered by an opinion of your department.”

Section 495 of the General Code, being a part of the chapter relating to the organization and powers of the Public Utilities Commission, provides as follows:

“The commission is authorized to procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus and appliances, including telephone and telegraph service (and to purchase from the interstate commerce commission blank forms for the use of railroads and other utilities in making their annual reports) necessary for the proper administration of the affairs of said commission as provided in this chapter (G. C. Secs. 487 et seq.) and the same shall be audited and paid as other expenses are audited and paid.”

It will be noted that the provision of this statute is that the commission is authorized “to *procure* all necessary books,” etc.

The word “purchase” is not used. It is fair to assume that the authority to procure the equipment named in the statute might carry with it the power to purchase it, but it is also evident that it does not necessarily do so, and will not be so construed if we find that the duty to make purchases for the commission is imposed on some other officer or body.

The section above quoted was a part of the original act setting up the Public Utilities Commission, and found in 103 O. L., page 804. It became effective in 1913.

By an act of the General Assembly passed in 1917, found in 107 O. L., 422 and codified as Sections 196-1 to 196-18, inclusive, of the General Code, there was established a state purchasing department. By the terms of this act there was created in the office of the Secretary of State the position of state purchasing agent, who under the supervision of the Secretary of State and the Auditor of State was authorized and required to make all purchases for all the state departments excepting boards of elections, the various courts, and the institutions under the direction of the state board of administration. The board of administration at that time had full charge of the management of the various welfare and penal institutions of the state. Section 196-6, General Code, provides in part as follows:

“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: * * *”

(Emphasis added.)

These provisions as to the duties and powers of the state purchasing department are still in effect. However, in the enactment of the Administrative Code in 1921, (109 O. L., p. 105) codified as Section 154-1 et seq. of the General Code, there was created in the department of finance an office called the superintendent of purchases and printing. Section 154-37, provides, among other things:

“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.”

This section further provides:

“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.”

There can be no question but that the public utilities commission is a state board or commission within the purview of Section 196-6 supra. Its members are appointed pursuant to law, by the Governor, and its duties are defined by statute.

Section 499, General Code, provides that all expenses incurred by the commission, including the actual and necessary traveling and other expenses and disbursements of its officers and employes shall be paid from funds appropriated for the use of the commission. It is true that by the

terms of Section 606, General Code, the commission is authorized to levy an assessment, up to the amount of \$375,000 per year, to be apportioned among and assessed upon the railroads and public utilities within the state, the monies arising therefrom to be used for the purpose of maintaining and administering the work of the commission. However, the General Assembly from time to time makes provision for the maintenance of the commission by appropriation. For example, the appropriation for the current biennium made by the 97th General Assembly is in the amount of \$680,138, and this is in addition to the further sum of \$349,052 for the division of investigation of such commission.

In the case of *Donahey v. State, ex rel.*, 101 O. S., 473, the court had before it the right of a member of the public utilities commission to receive the benefits of an increase in the salary of the commissioners during his term. He claimed that the constitutional provision in Section 20 of Article II did not apply to him because his salary was not paid by public funds raised by taxation. The court, however, held that the commissioners were public officers of the state and that the commissioner would be entitled to receive his salary from the state even if the assessment against public utilities should be inadequate to meet all the expenses of the commission.

I have examined the opinion of the Attorney General to which you refer, found in 1913 Opinions of the Attorney General, page 700, which held that the commission had authority to purchase certain forms from the interstate commerce commission and pay for them out of the revenues derived from assessments against public utilities. This opinion was rendered before the enactment of the laws relative to the state purchasing department, to which I have referred, and their effect could not, therefore, enter into the reasoning of that opinion. Accordingly, I do not consider that it has any bearing upon the question you have submitted.

In an opinion found in 1922 Opinions of the Attorney General, page 63, it was held that Section 154-37, General Code, did not operate to transfer to the department of finance the power to purchase materials, tools, etc., required by the highway department, since that power was expressly conferred on the highway department, along with the power to sell and exchange worn out equipment. Great weight was given to the principle that a special provision would prevail over an inconsistent general provision. Since there is no express power of purchase conferred

on the public utilities commission, I do not consider that that opinion is in any way controlling. A like holding had been made in 1918 Opinions of the Attorney General, page 209, mainly grounded on the same legal proposition, that the powers expressly granted to the highway department, being a special grant would prevail over the general grant to the purchasing department. The then Attorney General, in announcing this principle used this language:

“To be sure the principle herein enunciated applies only to such supplies and such equipment in reference to which *you are given the specific power and authority to purchase, sell or exchange*. In other respects your department would be controlled by the state purchasing act just the same as are all other departments of the state.” (Emphasis added.)

Section 196-15, General Code, requires each officer or commission desiring supplies or equipment from the purchasing department to make requisition therefor on a form prescribed by the Auditor of State.

It is accordingly my opinion that when the public utilities commission desires to procure necessary books, maps, charts, stationery, instruments, office furniture and appliances, it should make requisition upon the superintendent of purchases and printing, whose duty it is to purchase the same in accordance with the powers vested in him by Section 154-37 of the General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.

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Columbus, Ohio, September 9, 1948

Mr. Charles H. Hubbell, Attorney at Law
Cleveland, Ohio

Dear Sir:

Under date of September 7, 1948, you submitted for my examination a written petition bearing over one hundred names proposing an amendment to the Constitution of Ohio by the enactment of a new section to