

OPINION NO. 89-109**Syllabus:**

1. Pursuant to R.C. 125.06, the Department of Liquor Control may not directly purchase equipment, materials, and supplies unless it has first obtained a release and permit from the Department of Administrative Services to make such purchases. Where the Department of Administrative Services has issued a release and permit to the Department of Liquor Control for the purchase of equipment, materials, or supplies, such purchase remains subject to the requirements of R.C. 125.07, .09, .10 and .11. In addition, pursuant to R.C. 127.16(B)(1), the Department of Liquor Control may not, using money that has been appropriated directly to the Department of Liquor Control, purchase from a particular supplier other than a state agency, any equipment, materials, or supplies, or any combination thereof, that, when combined with all other purchases the Department of Liquor Control has made from the supplier during the fiscal year, will amount to ten thousand dollars or more, unless the purchase is competitively bid or approved by the Controlling Board.
 2. Pursuant to R.C. 125.06, the Department of Liquor Control may not directly procure services unless it has first obtained a release and permit from the Department of Administrative Services to make such procurement. Where the Department of Administrative Services has issued a release and permit to the Department of Liquor Control for the procurement of services, such procurement remains subject to the requirements of R.C. 125.071, .09(A) and (B), .10 and .11(A). In addition, pursuant to R.C. 127.16(B)(1), the Department of Liquor Control may not, using money that has been appropriated directly to the Department of Liquor Control, purchase from a particular supplier other than a state agency, any services that, when combined with all other purchases the Department of Liquor Control has made from the supplier during the fiscal year, will amount to ten thousand dollars or more, unless the purchase is competitively bid or approved by the Controlling Board.
 3. The lease of building space for use as a state liquor store under R.C. 4301.11 is not subject to the requirements of R.C. 125.09-.11.
 4. Where a purchase or procurement is subject to R.C. 125.10, a representative of the Auditor of State must be present at the opening of all bids, and must certify the opening of all bids.
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To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1989

I have before me your request for my opinion concerning the extent to which the Department of Liquor Control is subject to the requirements of several sections within R.C. Chapter 125. Specifically, you ask:

1. To what extent is the purchase of supplies, equipment and materials by the Department of Liquor Control subject to the competitive bidding requirements and procedures enumerated in section 125.07, 125.09, 125.10, and 125.11, R.C.?
2. To what extent is the purchase of services (e.g. trucking services) subject to the competitive bidding requirements of sections 125.071, 125.09, 125.10 and 125.11, R.C.?
3. Are contracts for lease of state liquor stores as authorized under section 4301.11, R.C. subject to sections 125.09-.11, R.C.?
4. With regard to a purchase subject to the competitive bidding requirements of Chapter 125 of the Revised Code, if the Auditor of State fails to receive *any* sealed copies of bids (see section 125.10, R.C.), is such failure sufficient to invalidate the subsequent awarding of bid?

Your first question concerns the extent to which the Department of Liquor Control is subject to the provisions of R.C. 125.07, .09, .10, and .11, with respect to the purchase of equipment, materials, and supplies. Through the provisions of R.C. 125.01-.111, the General Assembly has provided for a centralized system of state purchasing. These provisions appear to concern the authority of the Department of Administrative Services, rather than the Department of Liquor Control, to make purchases of certain specified classes of goods and services. Thus, before I address the requirements of the specific sections which you have cited, it is necessary that I first determine whether the Department of Liquor Control is required to make purchases of such goods through the Department of Administrative Services.

R.C. 125.02 grants to the Department of Administrative Services the authority to make purchases for the use of state agencies, providing in pertinent part:

Except as to the military department, the general assembly, and institutions administered by boards of trustees, the department of administrative services may purchase supplies, materials, equipment, and services for the use of state agencies.¹

In addition, R.C. 125.06 prohibits any state officer, board, or commission other than the Department of Administrative Services and those governmental

¹ The term "state agency" is not defined for purposes of R.C. 125.02 within any of the provisions of R.C. Chapter 125. R.C. 1.60 does, however, provide that:

As used in Title I of the Revised Code, "state agency," except as otherwise provided in the title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.

The Department of Liquor Control is established in R.C. 4301.10, and is charged with the responsibility of, *inter alia*, regulating the distribution of spiritous liquors throughout the State. The Department of Liquor Control, therefore, appears to fall within the definition of a "state agency" provided in R.C. 1.60.

bodies expressly exempted by R.C. 125.04² from making such purchases unless the Department of Administrative Services issues a release and permit to do so:

No elective or appointive state officer, board, or commission, unless excepted in section 125.04 of the Revised Code, shall procure or purchase any equipment, materials, supplies, services, or contract of insurance, or make contracts for or operate computer services, *other than from or through the department of administrative services*. When the department determines that it is impractical for any officer, board, or commission to obtain any equipment, materials, supplies, services, or contract of insurance, or to contract for or operate computer services, from or through the department, it *may issue to such commission a release and permit* to secure such equipment, materials, supplies, services, or contract of insurance, or to contract for or operate computer services, other than from or through the department. (Emphasis added.)

This section has been interpreted as requiring that each department of the state purchase³ or procure any equipment, materials, supplies, services,⁴ contracts of insurance, and computer services it needs from or through the Department of Administrative Services. See, e.g., 1981 Op. Att'y Gen. No. 81-057 (the Department of Transportation is generally required to follow the purchasing directives

2 R.C. 125.04(A) provides in pertinent part:

Whenever it is considered necessary, the department of administrative services shall determine what supplies, equipment, and services, 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, and what contracts of insurance authorized by law shall be purchased and furnished for such officers, boards, and commissions. *Supplies, equipment, services, and contracts of insurance, for boards of elections, courts of appeals, courts of common pleas, the supreme court, the general assembly, maintenance of the Ohio national guard, and agricultural experimental stations of the state, shall not be included in such lists of supplies, equipment, services, and contracts of insurance to be purchased and furnished by the department.* (Emphasis added.)

3 It is particularly noteworthy that the definition of the word "purchase," as used in R.C. 125.01-.111, is not limited to the direct acquisition of equipment, materials, or supplies. R.C. 125.01(F) defines the word "purchase," as used in R.C. Chapter 125, to mean:

to buy, purchase, *installment purchase, rent, lease, lease purchase*, or otherwise acquire equipment, materials, supplies, or services. "Purchase" also includes all functions that pertain to the obtaining of equipment, materials, supplies, or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. (Emphasis added.)

4 R.C. 125.01(G) defines the word "services," as used in R.C. Chapter 125, to mean:

the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

established by the Department of Administrative Services under R.C. Chapter 125). Thus, pursuant to R.C. 125.06, the Department of Liquor Control is required to purchase the equipment, materials, and supplies it needs through the Department of Administrative Services unless it first obtains a release and permit under R.C. 125.06.

I am cognizant that certain provisions of R.C. Chapter 4301 are capable of being interpreted as authorizing the Department of Liquor Control to purchase certain goods without first obtaining a release and permit from the Department of Administrative Services. Specifically, R.C. 4301.10 provides that the Department of Liquor Control may "purchase such equipment as is required" to operate the state liquor stores, and to "[e]xercise all other powers expressly or by necessary implication conferred upon the department by Chapters 4301. and 4303. of the Revised Code, and all powers necessary for the exercise or discharge of any power, duty, or function expressly conferred or imposed upon the department by such chapters." However, consistent with the well-established tenet of statutory interpretation that the provisions of related statutes are generally to be read *in pari materia*, or together and harmoniously, in order to give full effect, *see Bobb v. Marchant*, 14 Ohio St. 3d 1, 469 N.E.2d 847 (1984); *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), provisions analogous to R.C. 4301.10 have long been interpreted as authorizing the direct purchase of equipment, materials, and supplies by state agencies only after the agency has complied with R.C. 125.06 by first obtaining a release and permit for such purchases. *See* 1981 Op. Att'y Gen. No. 81-057 (R.C. 5513.01 which authorizes the Department of Transportation to purchase machinery, materials, and supplies, does not authorize the Department of Transportation to purchase such items without first obtaining a release and permit from the Department of Administrative Services); 1939 Op. Att'y Gen. No. 1112, vol. II, p. 1619 (notwithstanding the presence of G.C. 1226-1 authorizing the department to purchase materials and supplies, the Department of Highways is required to obtain a release and permit from the Department of Finance⁵ to purchase printed materials); 1939 Op. Att'y Gen. No. 81, vol. I, p. 89 (the Department of Liquor Control is required to purchase printed matter or forms from the Department of Finance except where a release and permit has been issued by the Department of Finance). Thus, it is apparent that notwithstanding the presence of R.C. 4301.10, the Department of Liquor Control may not purchase equipment, materials, or supplies without first obtaining a release and permit from the Department of Administrative Services.⁶

⁵ In 1973, R.C. 125.06 was amended, transferring the authority to make purchases for state agencies from the former Department of Finance to the newly-created Department of Administrative Services. *See* 1973 Ohio Laws Part I, p. 639 (S.B. 174, eff. Dec. 4, 1973).

⁶ In reaching this conclusion, I have solely attempted to address the relevant legal issues within general perimeters set forth by your inquiry. I do not attempt to determine the applicability of these provisions to specific types of goods that might fall within the categories of "equipment, materials, [or] supplies." I note, however, that the purchase of spirituous liquors by the Department of Liquor Control is not subject to the requirements of R.C. 125.07-.111. Under R.C. 125.04(A), state agencies are required to purchase through the Department of Administrative Services those items of equipment and supply which are required for the agency's "use and maintenance." As a general matter, this restriction is of little import because almost all items needed by a state agency are required for the agency's use and maintenance. Unlike most state agencies, however, the Department of Liquor Control is authorized to operate and maintain retail establishments: the state liquor stores. *See* R.C. 4301.10. The spirituous liquors purchased by the Department of Liquor Control are not purchased for the use and maintenance of the Department, but rather for resale through the state liquor stores to the general public and to holders of permits authorizing the sale of such liquor. *See also* R.C. 125.11(D); 1937 Op. Att'y Gen. No. 1452, vol. III, p. 2425.

I must next consider whether, in those instances where the Department of Liquor Control has obtained a release and permit, the statutory provisions you have specified apply to purchases of equipment, materials and supplies made by the Department of Liquor Control. Your inquiry specifically concerns the provisions of R.C. 125.07, .09, .10, and .11. The first of these sections, R.C. 125.07, provides in pertinent part:

All equipment, materials, supplies, and services purchased by the department of administrative services shall be purchased through competitive bidding, except where such equipment, materials, supplies, or services are purchased pursuant to sections 4115.31 to 4115.35 of the Revised Code or where the amount of such purchase is five thousand dollars or less.

Under this provision, the Department of Administrative Services is required to purchase all equipment, materials, and supplies by competitive bidding except where the equipment, materials, or supplies are purchased from qualified nonprofit agencies for the severely handicapped as provided for in R.C. 4115.31 to R.C. 4115.35, or where the amount of the purchase is equal to or less than \$5,000. Thus, I conclude that in those instances where the Department of Administrative Services awards a contract for the purchase of equipment, materials, or supplies on behalf of the Department of Liquor Control, it is required to do so in accordance with the provisions of R.C. 125.07.

In addition, in instances where the Department of Liquor Control has obtained a release and permit from the Department of Administrative Services to make purchases of equipment, materials, or supplies, the Department of Liquor Control acts in place of the Department of Administrative Services, and, therefore, must also comply with the provisions of R.C. 125.07. See *Control Data Corp. v. Controlling Board*, 16 Ohio App. 3d 30, 36, 474 N.E.2d 336, 343 (Franklin Co. 1983) (where a state agency obtains a release and permit from the Department of Administrative Services to purchase equipment on its own, the state agency is "still bound by the rules governing all purchases by the [Department of Administrative Services] as set out by R.C. 125.07"). Therefore, I conclude that even where the Department of Liquor Control has obtained a release and permit from the Department of Administrative Services, the provisions of R.C. 125.07 are applicable to the purchase of equipment, materials, and supplies by the Department of Liquor Control.⁷

In addition to the provisions of R.C. 125.07, you have also asked whether the Department of Liquor Control is required to let contracts for supplies, equipment, and materials by competitive bid in accordance with the provisions of R.C. 125.09, .10, and .11. R.C. 125.09 provides:

(A) The department of administrative services may prescribe such conditions under which bids will be received and terms of the proposed purchase as it considers necessary; provided, that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition, and bidders may bid upon all or any item of the supplies, equipment, services, or contracts of insurance, listed in such notice. Those bidders claiming the preference for United States and Ohio products outlined in this chapter shall designate in their bids

⁷ I note that the result which I reach in this instance may be construed as conflicting, at least in part, with an opinion of my predecessor. See 1981 Op. Att'y Gen. No. 81-057 (the Department of Transportation is not required to comply with the directives of the Department of Administrative Services and the Auditor of State where the department has obtained a release and permit from the Department of Administrative Services). Op. No. 81-057 concerned a very different statutory scheme and was rendered before the court's decision in *Control Data Corp. v. Controlling Board*, *infra*. Therefore, to the extent that Op. No. 81-057 is in conflict the conclusions expressed herein, it is hereby overruled.

either that the product to be supplied is an Ohio product or that under the rules established by the director of administrative services they qualify as having a significant Ohio economic presence.

(B) The department may require that each bidder provide sufficient information about the energy efficiency or energy usage of his product or service.

(C) The director of administrative services shall, by rule adopted pursuant to Chapter 119. of the Revised Code, prescribe criteria and procedures for use by all state agencies in giving preference to United States and Ohio products as required by division (B) of section 125.11 of the Revised Code....

Similarly, the third section which you have specified, R.C. 125.10, also references the Department of Administrative Services, providing in pertinent part:

The department of administrative services may require that all bids be accompanied by a bond in such sum and with such sureties as it prescribes, payable to the state, and conditioned that such bidder, if his bid is accepted, will faithfully execute the terms of the contract and promptly make deliveries of the supplies or equipment, or contracts of insurance, purchased....

Finally, R.C. 125.11 provides in pertinent part:⁸

(A) Subject to division (B) of this section, contracts shall be awarded to the lowest responsive and responsible bidder on each item.... The department of administrative services may accept or reject any or all bids in whole or by items, except when the contract is for equipment, services, materials, or supplies available from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code, the contract shall be awarded to that agency.

(B) Prior to awarding a contract under division (A) of this section, the department of administrative services or the state department, office, institution, or commission responsible for evaluating a contract for the purchase of goods shall evaluate the bids received according to the criteria and procedures established pursuant to divisions (C)(1) and (2) of section 125.09 of the Revised Code for determining if a product is produced or mined in the United States and if a product is produced or mined in Ohio....

With the exception of R.C. 125.11(B), each of the above quoted provisions references only the Department of Administrative Services. R.C. 125.11(B), however, is expressly made applicable to both the Department of Administrative Services and any "state department, office, institution, or commission responsible for evaluating a contract for the purchase of goods." Based upon the foregoing, it is clear that where the Department of Administrative Services contracts for the purchase of supplies, equipment, or materials on behalf of the Department of Liquor Control, the Department of Administrative Services is required to do so in accordance with the provisions of R.C. 125.09, .10, and .11.

My conclusion does not, however, resolve the issue of whether a state agency which has obtained a release and permit must also comply with these provisions. As

⁸ R.C. 125.11 also includes two additional divisions, (C) and (E). I have not discussed these divisions because they do not directly concern competitive bidding by the Department of Liquor Control. R.C. 125.11(C) specifies that the provisions of R.C. 125.11(B) do apply to contracts awarded under R.C. 125.081 (contracts set aside for minority business enterprises) and to contracts for which competitive bidding is waived by the controlling board. R.C. 125.11(E) authorizes the director of the Department of Administrative Services to promulgate a model act similar to the state's preference program for products produced or mined in the United States or Ohio, for use by townships, municipalities, and counties.

noted above, R.C. 125.11(B) is expressly made applicable to any "state department, office, institution, or commission responsible for evaluating a contract for the purchase of goods." The Department of Liquor Control is specifically designated as a department of state government. R.C. 121.02(J). Thus, the Department of Liquor Control clearly must comply with the provisions of R.C. 125.11(B). In addition, state agencies are also bound by the requirements of R.C. 125.07 even where they have obtained a release and permit from the Department of Administrative Services. See *Control Data Corp. v. Controlling Board, infra*.

It is a well-established principle that provisions of related statutes are generally to be read *in pari materia*, or together and harmoniously, in order to give full effect. *Bobb v. Marchant*, 14 Ohio St. 3d 1, 469 N.E.2d 847 (1984); *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956). To interpret these provisions without reference to the court's construction of R.C. 125.07 would produce incongruous results by, in effect, mandating that state agencies other than the Department of Administrative Service comply with the requirements of R.C. 125.07, but not with the requirements of R.C. 125.09-11 even though identical language is used in each. Therefore, I conclude that even where the Department of Liquor Control has obtained a release and permit from the Department of Administrative Services, it is required to purchase supplies, equipment, and materials in accordance with the provisions of R.C. 125.09-11.

In reaching this conclusion, I also wish to emphasize that even where a contract for the purchase of equipment, materials, or supplies is for less than \$5,000 and thus is not required by R.C. 125.07 to be let by competitive bid, the Department of Liquor Control may still be required to award the contract by competitive bid under the provisions of R.C. 127.16(B). Pursuant to R.C. 127.16(B):

(1) No state agency, using money that has been appropriated to it directly, shall purchase, from a particular supplier other than a state agency, any services, equipment, materials, or supplies, or any combination thereof, that, when combined with all other such purchases the agency has made from the supplier during the fiscal year, will amount to ten thousand dollars or more, unless the purchase is competitively bid or approved by the controlling board.

The provisions of R.C. 127.16(B)(1) may initially appear to be inconsistent with those of R.C. 125.07, in that the monetary limitation of \$10,000 provided for in R.C. 127.16(B)(1) is different from the \$5,000 monetary limitation provided for in R.C. 125.07. A closer reading discloses, however, that the requirements of R.C. 125.07 and R.C. 127.16(B)(1) serve very different purposes, and thus are supplementary rather than inconsistent. Unlike the provisions of R.C. 125.07, the monetary limitation of R.C. 127.16(B)(1) is not calculated on a per contract basis. Instead, R.C. 127.16(B)(1) requires that if, *when taken in the aggregate*, all of the contracts for the purchase of equipment, materials, or supplies that have been awarded by a state agency to a particular supplier within the fiscal year will equal or exceed ten thousand dollars, the state agency must either award the contract by competitive bid, or in the alternative, obtain the approval of the Controlling Board. In addition, the application of R.C. 127.16(B)(1) is expressly limited to those instances where the moneys being used to pay for the purchase are "money[s] that [have] been appropriated to [the agency] directly." The provisions of R.C. 125.07 do not include such a restriction, and, therefore, would be applicable without regard to the source of the funds being used to make the purchase. Thus, where the Department of Liquor Control, using money that has been appropriated directly to it, awards a contract for less than \$5,000, the Department may still be required, under R.C. 127.16(B)(1), to award the contract by competitive bid, or in the alternative, obtain the approval of the Controlling Board, if the supplier to which the contract is being awarded has received contracts equalling or exceeding \$10,000 within the current fiscal year.

Your second question concerns the extent to which the procurement of services by the Department of Liquor Control is subject to the requirements of R.C. 125.071, 125.09, 125.10, and 125.11. As quoted above, R.C. 125.06 prohibits any elective or appointive state officer, board, or commission from procuring or purchasing any "equipment, materials, supplies, services, or contracts of insurance...other than from

or through" the Department of Administrative Services. (Emphasis added.) Thus, the plain language of R.C. 125.06 again compels the conclusion that the Department of Liquor Control may directly procure services only if it has obtained a release and permit from the Department of Administrative Services to do so.

Turning then to the statutory provisions which you have specified, I must again consider whether the provisions of such sections are applicable to purchases by the Department of Liquor Control where it has obtained a release and permit to procure services. As quoted above, the provisions of R.C. 125.11(B) and R.C. 125.09(C) appear to concern only the purchase of "goods." By their express terms, these statutes provide for a system of preferences for "*products produced or mined*" in the United States or Ohio. (Emphasis added.) R.C. 125.09(C). Further, R.C. 125.11(B) provides that its requirements apply to "the department of administrative services [and each] state department, ... responsible for evaluating a contract for the purchase of *goods*." (Emphasis added.) The use of the terms "products" and "goods" indicates that the General Assembly intended for the provisions of R.C. 125.09(C) and .11(B) to be applicable only where the contract is for the purchase of tangible property. Thus, because the provisions of R.C. 125.09(C) and .11(B) relate only to the purchase of "goods" and "products," and not to the purchase of "services," I conclude that where the Department of Liquor Control has obtained a release and permit from the Department of Administrative Services to procure services, the Department of Liquor Control is not subject to the provisions of R.C. 125.09(C) and .11(B).

In contrast with these provisions, R.C. 125.071 provides:

The department of administrative services may procure services. Where the cost of services totals ten thousand dollars or more, the services shall be procured by competitive bidding, except as exempted in division (D) of section 127.16 of the Revised Code or where controlling board approval is obtained or where the services are purchased pursuant to sections 4115.31 to 4115.35 of the Revised Code. Where services are procured by competitive bidding, notice of the proposed procurement shall be given as provided in divisions (A) to (E) of section 125.07 of the Revised Code. For purposes of this section, procurement does not include acquisition incidental to a lease. A state agency may, without competitive bidding, procure services that cost less than ten thousand dollars. (Emphasis added.)

R.C. 125.071 grants to the Department of Administrative Services the permissive authority to contract for services. The Department of Administrative Services is required to procure such services by competitive bid where the cost of services totals ten thousand dollars or more. Similarly, the provisions of R.C. 125.09(A) and (B), R.C. 125.10, and R.C. 125.11(A) are of general applicability to all contracts awarded by the Department of Administrative Services under R.C. 125.01-.111. Thus, I conclude that in those instances where the Department of Administrative Services awards a contract for services on behalf of the Department of Liquor Control, it is required to do so in accordance with the provisions of R.C. 125.071, .09(A) and (B), .10, and .11(A).

In addition, as discussed with respect to the purchase of equipment, materials, and supplies, where a state agency obtains a release and permit from the Department of Administrative Services, it acts under the authority of the Department of Administrative Services and thus remains subject to the statutory provisions governing purchases by the Department of Administrative Services. See *Control Data, infra*. Therefore, I conclude that where the Department of Liquor Control has obtained a release and permit from the Department of Administrative Services to procure services, the Department of Liquor Control is subject to the provisions of R.C. 125.071, .09(A) and (B), .10, and .11(A). In addition, I must again emphasize that except as is otherwise provided in R.C. 127.16(D), the Department of Liquor Control may also required by R.C. 127.16(B) to procure services by competitive bid where such a purchase would result in a single supplier receiving orders for more than ten thousand dollars within a single fiscal year. In the alternative, the Department of Liquor Control may obtain approval from the Controlling Board to make such procurements without receiving competitive bids.

Your third question concerns whether the contracts for lease of state liquor stores as authorized under R.C. 4301.11,⁹ are subject to R.C. 125.09-.11. It is a well-established rule of construction that, absent statutory definition, words generally should be afforded their natural, literal, common, or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983); *Lake County National Bank v. Koysdar*, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973). In the present context, the provisions of R.C. 125.09-.11 each concern the manner in which the items specified in R.C. 125.06 should be purchased or procured. As quoted above, R.C. 125.06 requires that state agencies purchase the equipment, materials, supplies, services, contracts of insurance, and computer services they need from or through the Department of Administrative Services. The lease of building space or real property is not included among those items which state agencies must purchase or procure through the Department of Administrative Services under R.C. 125.06.¹⁰ Therefore, I conclude that the lease of state liquor stores as authorized under R.C. 4301.11 is not subject to the requirements of R.C. 125.09-.11.

Your final question concerns whether a contract may be properly awarded where a contract is subject to the requirements of R.C. 125.10 and where the Auditor of State fails to receive any sealed copies of bids. Your request mirrors the former language of R.C. 125.10, which required that a copy of each bid be submitted to the Auditor of State. Subsequent to your request, however, R.C. 125.10 was amended. *See* Am. Sub. H.B. 88, 117th Gen. A. (1988) (eff. January 1, 1988). I will therefore construe your question as it applies to R.C. 125.10 in its current form. R.C. 125.10 provides in pertinent part:

⁹ Where the Department of Liquor Control leases building space for state liquor stores, it must do so through competitive bid. R.C. 4301.11 provides:

All contracts of lease for a state liquor store entered into by the department of liquor control shall be made in writing with the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, after an advertisement in a newspaper of general circulation in the community wherein it is proposed to establish such store. In determining the lowest responsive and responsible bid, the department shall consider the length of the lease, the location, size, character, and quality of the construction, and the general fitness for use as such store of the premises for which a bid is submitted.

The liquor control commission may prescribe the form of bid and shall prescribe rules pertaining to the receiving and advertisement of such bid; provided that before accepting a bid and before entering into any contract of lease of the premises for use as a state liquor store the department shall publish in a newspaper of general circulation in the community wherein such premises are located a synopsis of the terms of such proposed lease including the name of the lessor, the location of the premises, and the yearly rental.

The department may reject any or all bids. If the department rejects all bids it shall readvertise for bids for such leases and may continue to readvertise for such bids until bids satisfactory to it are received.

No member of the commission, or any officer or employee of the department, shall directly or indirectly have any interest in any contract of lease entered into by the department.

¹⁰ My conclusion should not be read, however, as permitting the lease or purchase of equipment, materials, supplies, or services as a part of a lease of building space or real property to avoid the requirements of R.C. 125.07-.11. Moreover, R.C. 123.01 does give the Department of Administrative Services authority over certain leasing activity, although the leasing of state liquor stores is explicitly excluded under R.C. 123.01(B).

A sealed copy of each bid shall be filed with the department prior to the time specified in the notice for opening of the bids. All bids shall be publicly opened in the office of the department at the time specified in the notice. A representative of the auditor of state shall be present at the opening of all bids, shall certify the opening of each bid, and no bid shall be considered valid unless it is so certified. (Emphasis added.)

Where the word "shall" has been employed in a statute, absent a clear and unequivocal showing of a contrary intention, it is presumed that the General Assembly intended the given requirement to be mandatory. See *State ex rel. City of Niles v. Bernard*, 53 Ohio St. 2d 31, 372 N.E.2d 339 (1978); *Mallory v. City of Westlake*, 52 Ohio St. 2d 103, 370 N.E.2d 457 (1977); *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971); 1986 Op. Att'y Gen. No. 86-080. In the present context, there is no indication that the General Assembly intended for this requirement to be permissive. To the contrary, the fact that the statute specifically reiterates that "no bid shall be considered a valid bid unless it is so certified" clearly indicates that the General Assembly intended that the certification of all bids by the representative of the Auditor of State should be a mandatory condition precedent to the award of contracts let under R.C. 125.07. Thus, where the representative of the Auditor of State has not certified the opening of each bid, each of the bids submitted is invalid. I must, therefore, conclude that any subsequent award of the contract solely based upon invalid bids would be improper.

Accordingly, it is my opinion and you are hereby advised that:

1. Pursuant to R.C. 125.06, the Department of Liquor Control may not directly purchase equipment, materials, and supplies unless it has first obtained a release and permit from the Department of Administrative Services to make such purchases. Where the Department of Administrative Services has issued a release and permit to the Department of Liquor Control for the purchase of equipment, materials, or supplies, such purchase remains subject to the requirements of R.C. 125.07, .09, .10 and .11. In addition, pursuant to R.C. 127.16(B)(1), the Department of Liquor Control may not, using money that has been appropriated directly to the Department of Liquor Control, purchase from a particular supplier other than a state agency, any equipment, materials, or supplies, or any combination thereof, that, when combined with all other purchases the Department of Liquor Control has made from the supplier during the fiscal year, will amount to ten thousand dollars or more, unless the purchase is competitively bid or approved by the Controlling Board.
2. Pursuant to R.C. 125.06, the Department of Liquor Control may not directly procure services unless it has first obtained a release and permit from the Department of Administrative Services to make such procurement. Where the Department of Administrative Services has issued a release and permit to the Department of Liquor Control for the procurement of services, such procurement remains subject to the requirements of R.C. 125.071, .09(A) and (B), .10 and .11(A). In addition, pursuant to R.C. 127.16(B)(1), the Department of Liquor Control may not, using money that has been appropriated directly to the Department of Liquor Control, purchase from a particular supplier other than a state agency, any services that, when combined with all other purchases the Department of Liquor Control has made from the supplier during the fiscal year, will amount to ten thousand dollars or more, unless the purchase is competitively bid or approved by the Controlling Board.
3. The lease of building space for use as a state liquor store under R.C. 4301.11 is not subject to the requirements of R.C. 125.09-.11.

4. Where a purchase or procurement is subject to R.C. 125.10, a representative of the Auditor of State must be present at the opening of all bids, and must certify the opening of all bids.