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COAL—AUTHORITY AND DUTY TO PURCHASE FOR VARIOUS INSTITUTIONS OF STATE UNDER DEPARTMENT OF PUBLIC WELFARE, VESTED IN DIVISION OF PURCHASES AND PRINTING OF DEPARTMENT OF FINANCE—PURCHASES MUST BE MADE BY COMPETITIVE BIDDING—RULES OF DIRECTOR OF FINANCE.

SYLLABUS:

The authority and duty to purchase coal for the various institutions of the state which are under the supervision of the department of welfare, are vested in the division of purchases and printing of the department of finance, and such purchases must be made by competitive bidding under rules adopted by the director of finance.

Columbus, Ohio, March 19, 1947

Mr. J. W. Barton, Superintendent, Purchases and Printing
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“For the past several years the Federal Government has set the price on coal, and this Department has been purchasing without taking bids.

Both the Guffey Act and the Office of Price Administration have now expired, and the government no longer sets the prices.

Prior to these two Acts, this Department purchased coal for the various Welfare Institutions on the open market, without bidding.

We would like to know if there is anything in our State laws which conferred authority to this Department to make such purchases, and, if there is such a statute, is it still in effect."

By an act passed in 1911, found in 102 O. L., page 211, there was created the "Ohio board of administration," which was given full charge of the management of the various welfare and penal institutions of the state. This act was codified as Sections 1832 to 1871, inclusive, of the General Code. Section 1849, which is still in force, reads 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."

A state purchasing department was created by an act passed in 1917, found in 107 O. L., page 422, and codified as Sections 196-1 to 196-18 of the General Code. By the provisions 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 required to make all purchases for all the state departments excepting for the boards of state supervisors and inspectors of elections, for the various courts, for the institutions under the direction of the state board of administration, for the Ohio national guard, the agricultural experiment stations, for the educational institutions of the state, and for the commissioner of public printing. Under the provisions of

Section 196-7, all of such supplies were to be purchased through competitive bidding, where the amount of such purchase was \$100 or more.

Upon the enactment in 1921, of the administrative code (Section 154-1 et seq., General Code) the powers generally of the board of administration were transferred to the newly created department of public welfare, but all powers and duties of that board relative to purchases were transferred to the office of the director of finance. Section 154-6 created within the department of finance the office of superintendent of purchases and printing. Section 154-26 abolished the former office of state purchasing agent. Section 154-37 provides in part as follows:

“* * * 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. * * *”

(Emphasis added.)

It seems clear therefore, that in so far as concerns your purchases for the various institutions under the department of welfare, your course of procedure is governed by Section 1849, supra. This section requires all purchases of supplies to be made by competitive bidding. There is no provision in the law as to the amount or character of the notice to bidders, that matter being left to rules to be adopted by the director of finance. The only exception to this mode of procedure which I find in the statute is that contained in the last paragraph of Section 1849,

which authorizes the director of finance to permit the managing officers of any institution to purchase perishable goods and supplies in case of emergency. That provision could hardly apply to the purchase of coal. I find nothing in the statutes authorizing your department to purchase coal for the welfare institutions in the open market without competitive bidding.

Accordingly, in specific answer to your question it is my opinion that the authority and duty to purchase coal for the various institutions of the state which are under the supervision of the department of welfare, are vested in the division of purchases and printing of the department of finance and that such purchases must be made by competitive bidding under rules adopted by the director of finance.

Respectfully,

HUGH S. JENKINS,
Attorney General.