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Purchasing agent lets the contract for printing and binding court reports, but Supreme Court controls storage, distribution and sale of said reports.

*Purchasing Agent*

November 7, 1947

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Honorable Wm. L. Smith  
State Purchasing Agent  
Jefferson City, Missouri

Dear Mr. Smith:

We have your letter of recent date which reads as follows:

"I am enclosing herewith a conformed copy of specifications, that have previously been handled through the Supreme Court.

They are contemplating issuing a new contract for the printing and storing of all reports.

I would like to ask your opinion to clarify the following questions.

(1) Is the state purchasing agent authorized to act under Sec. 2080 R.S. 1939 in letting a two year contract? In other words, is this section to be treated as still in force but amended only to the extent that Section 76 of the Department of Revenue Act requires the contract to be let by the state purchasing agent instead of the Supreme Court?

(2) Are Sections 2081, 2082, 2083, and 2085, R. S. 1939 still in force and applicable to the contract in question.

(3) In view of the provisions of Section 82 of the Department of Revenue Act dealing with storage, is the state purchasing agent authorized to let a contract containing substantially the same storage provisions as are contained in the storage paragraph of the contract dated December 21, 1945?

(4) In view of the provisions of Section 82 of the Department of Revenue Act that 'except as otherwise provided by law' the purchasing agent shall be the sales agent for the state for any publication sold, is the purchasing agent authorized to enter into a contract providing that the distribution shall be in the hands of the printer subject to the directions of the Supreme Court; that is, containing substantially the same provisions as the paragraph on distribution contained in the contract of December 21, 1945? The position heretofore taken by the respective chief justices who authorized the form of contract in question was that the duties placed upon the court, particularly under Secs. 2082, 2083, and 2085, authorized the Supreme Court to use the printer as an agency of the state for making the distribution. This is a long established practice which has been approved in several audits made by the state auditor.

Do the words 'except as otherwise provided by law' in Sec. 82 of the Department of Revenue Act authorize the continuance of this practice under Secs. 2082, 2083, and 2085, R. S. 1939, which indicate an intent that the Supreme Court shall control the sale and distribution in accordance with what it believes to be in the best interests of the state? In this connection, it might be pointed out that not only are free copies provided for local and state officials, but hundreds of volumes are sent under exchange arrangements to state Supreme Court libraries and law school libraries all over the United States. The library of the Missouri Supreme Court and the library of the law school of the University of Missouri receive free of charge the official reports of other states'."

Sections 2080, 2081, 2082, 2083 and 2085, R. S. Mo. 1939, referred to in your letter, read as follows:

Section 2080 - "The supreme court of the state of Missouri is hereby authorized, empowered and directed to contract for the printing, stereotyping and binding of the decisions of the supreme court and the courts of appeals of the state of Missouri. On or before January 1st, 1927, and every two (2) years thereafter the supreme court, or any committee of the members thereof who may be appointed by the court to act hereunder, shall give notice by advertisement, published for thirty (30) days in at least one newspaper of general circulation printed in the English language in the city of St. Louis or Kansas City, that on a specified day and date bids will be received from responsible printers and binders for furnishing to the state the type-setting, plates or matrices, and for the printing and binding of the decisions of the supreme court and of the courts of appeals for a period of two years thereafter."

Section 2081 - "The specifications of the material, the composition, and the workmanship, and all other details necessary to the economical and prompt production of said volumes, as well as all proper safeguards and guarantees such as bid and contract bonds, shall be designated by the supreme court on terms most advantageous to the state."

Section 2082 - "The supreme court is hereby further authorized to designate the number of copies of each volume to be so printed and bound, keeping in mind the requirements of the state, and the public and legal profession, both in and out of the state, and each volume of said reports shall be copyrighted in the name of the clerk of the supreme court for the benefit of the people of the state of Missouri."

Section 2083 - "The supreme court is further authorized to fix the price at which said reports are to be sold to the citizens of this state and other states, provided said price to the citizens of Missouri shall not exceed the cost of manufacture and distribution. The custody of said books, stereotype plates and matrices shall be and remain in the charge of the supreme court or such officers of said court as shall be designated by said court to have charge thereof. Said officers so designated shall keep a record of the books, plates, and matrices received from the printer, shall deliver to the proper officers of the state such volumes as are or may be required to be delivered to or distributed through said officers to the officials authorized to receive same."

Section 2085 - "The contracts for the printing and binding of the current volumes of reports shall also specify the prices at which the contractor will print, bind and deliver reprints from the plates and from the matrices of the volumes previously issued."

The above statutes have been in existence many years, and they authorized the Supreme Court to contract for the printing and binding of the official reports of the Appellate Courts and to distribute and sell said reports. However, the 63rd General Assembly passed many statutes which changed the policies of the state as to many of its fiscal and business affairs, and it is necessary to examine these new statutes to see what, if any, changes have been made in the handling of the printing, binding and distribution of the official reports of the Appellate Courts.

The new statutes appropos of the questions we are considering are found at page 1449 - 1456, L. 1945, and they read as follows:

Section 76 - "The state purchasing agent shall purchase all public printing and binding of the state, including that of all executive and administrative departments, bureaus, commissions, institutions and agencies, the general assembly and the supreme court. In such capacity the state purchasing agent is hereby empowered and authorized to take over as a part of the records of his office, all

books, documents, and records which are now in the hands of the Commissioners of Public Printing and the Secretary of State relative to public printing. It shall be the duty of all state officers to order all of their printing and binding through the state purchasing agent. The purchasing agent may authorize any state penal, eleemosynary or educational institution, to procure all or any part of its own printing and binding."

Section 78 - "It shall be the duty of the state purchasing agent to advise with the officials and heads of departments as to the preparation of manuscript or copy for any printed matter, so the same may be handled in the most economical manner in the editing and printing. The form, style, size and arrangement of type, the spacing of lines, the width of borders and margins, the kind of binding, the method and material of all public printing shall, when not otherwise prescribed by law, be determined by the state purchasing agent having proper regard for economy and workmanship and the purpose for which the work is needed; provided that the form of the legislative printing shall remain substantially the same as that used during the session of the Sixty-second General Assembly, until changed by resolution; and provided that the clerk of the supreme court shall have authority to determine the typography of work done for the courts, after consultation with the purchasing agent; and provided that the Board of Curators of the University of Missouri and the Boards of Regents of the state colleges shall be authorized to determine for their respective institutions the typography of work done for those institutions after consultation with the state purchasing agent. The state purchasing agent, with the assistance of the purchasing committee provided in this act, shall standardize as many items of printing as shall be deemed practicable and shall from time to time prepare instructions to the using agencies describing the standards adopted and thereafter the purchasing agent shall not honor requisitions which do not comply with such standards."

Section 79 - "The state purchasing agent shall prepare specifications for all printing to be contracted for and shall invite all bids and let all contracts upon such specifications which shall be a part of each contract and shall not be changed or modified after the contract is awarded. Such specifications prepared by the purchasing agent shall state clearly and distinctly the kind and character of the work to be done, the quality of paper desired, the number of copies to be furnished, and wherever possible shall have attached a sample of previous issues of the publication or form. Copies of such specifications shall be made available to all bona fide applicants therefor."

Section 80 - "The state purchasing agent shall have the public printing of the state executed upon competitive bids, and shall award the contract to the lowest responsible bidder and shall in all instances reserve the right to reject any and all bids; provided that printing jobs of less value than \$50 may be purchased on the open market if approved by the comptroller. The purchasing agent may combine orders or subdivide individual jobs for the purpose of advertising and contracting as shall be to the best interests of the state. The purchasing agent shall exercise diligence in soliciting bids from all printing firms in the state that might reasonably be expected to be interested in bidding on any particular item and shall at all times endeavor to maximize competition among potential bidders. Bonds satisfactory to the purchasing agent shall be given by the parties to whom contracts are awarded, to secure the faithful performance of such contracts."

Section 82 - "The purchasing agent shall make rules governing the delivery, inspection, storage and distribution of all printing purchased under this law. He shall establish storage facilities for the storing of documents and printed matter of all state

agencies; provided however that the using agencies may be authorized by the purchasing agent to maintain in the vicinity of their own quarters sufficient quantities of documents and forms to meet their immediate needs. He shall establish facilities for the handling of mailing lists and shall maintain such mailing lists as the using agencies shall request, and may establish a duplicating unit to perform such work for the various state agencies. He may sell surplus paper and other such materials as may become obsolete. Except as otherwise provided by law, the purchasing agent shall be the sales agent for the state to sell any publication which by law may be authorized or required to be sold. Funds arising under this section shall go into the general revenue fund of the state."

Sections 2080 - 2085, R. S. 1939 have not been expressly repealed, so that we have them as well as the 1945 laws, supra, all dealing with the same subject matter. We must determine which of the various laws now control as to the printing, binding and distribution of the official reports of the Appellate Courts.

The 1945 Laws, supra, are a part of a general act dealing with the Division of Procurement. That act provides for the purchase of supplies and printing for the state government generally. It might be suggested that since Sections 2080 - 2085, R. S. 1939 are special statutes dealing with the one subject of printing and binding of official reports of the Appellate Courts, they were not repealed by the general statutes enacted in 1945 which deal with that same subject as a part of the general subject of state printing and binding. However, reference to Section 76 of the 1945 Laws, supra, will show that the printing and binding for the Supreme Court was specially provided for. The first sentence of that section provides that "The state purchasing agent shall purchase all public printing and binding of the state, including that of \* \* \* the general assembly and the supreme court." It thus appears that the 1945 Laws are

special as to the printing and binding for the Supreme Court, and clearly show that the Legislature intended to include that printing and binding in the duties of the state purchasing agent. In such a situation we think the 1945 act prevails over the 1939 sections dealing with the same subject matter. The rule applying to such a situation is stated in *State ex rel v. Smith*, 182 SW 2d, 571, 574, as follows:

"The settled rule, of course, is that in case of inconsistency the later act controls. (50 Am. Jur. 357, Sec. 355)"

Even if the 1945 act be considered a general act, we think it would still prevail over the 1939 statutes because the later provisions are inconsistent with the 1939 provisions and also clearly indicate an intention on the part of the Legislature to provide the only method that should be followed in the printing and binding of the court reports. With such a situation, the rule of construction applicable is stated in *Manker v. Faulhaber*, 94 Mo. 430, 439:

"The two statutes should be so construed as that both may stand if possible. Repeals by implication are not favored by the courts for cogent and sufficient reasons not necessary to repeat, and the prior law is to be upheld if the two acts may well subsist together. The charter act, conferring upon the mayor and aldermen the power to remove a municipal officer in the city of Sedalia, is special and particular. The act of 1877, providing for the removal of such an officer by a proceeding in the circuit court, is general and affirmative, containing no words negating the power conferred by the prior act. In order that the latter shall operate a repeal of the former, the two acts must be irreconcilably inconsistent, or it must clearly appear that the legislature intended by the latter act to prescribe the only rule that should govern in the case provided for."

Also in *State ex rel v. Smith*, 125 SW 2d 883, 885, it is said:

"It is a familiar doctrine that when there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

Also in *State ex rel v. Koeln*, 61 S.W. 2d 750, 755, it is said:

"The whole purpose of the many and harmonious rules of statutory construction is said to be to aid in arriving at the intention of the Legislature, as ascertained from the enactment itself, by calling in aid such of the rules as appear to have special application to the particular statute under consideration. In furtherance of such purpose we adopt and apply in this case a rule, or combination of rules, expressed in the following quotation: 'While the rule is that a general affirmative act, or the general provisions of an act, without express words of repeal, ordinarily will not repeal or affect a previous special or local act on the same subject, yet it is not a rule of positive law, but one of construction only; a special act may be impliedly repealed by a general one and the question whether it has been so repealed is always one of legislative intention.' *Schott v. Continental Auto Ins. Underwriters*, 326 Mo. 92, 31 S.W. (2d) 7; 59 C. J. Sec. 536. 'The special act is not repealed unless a different intent is plainly manifested, or where the two acts are irreconcilably inconsistent or repugnant, or where the general act covers the whole subject matter of the special one \* \* \* or is clearly intended to establish a uniform rule or system for the whole

state.' 59 C. J. Sec. 536; and cases cited in footnotes 85 and 89."

We conclude, therefore, that wherein the 1939 statutes and the 1945 statutes regarding the printing and binding of court reports are irreconcilably in conflict, the 1945 statutes prevail, but that such provisions of the two sets of statutes as are not so repugnant to each other that both cannot stand should be given effect. With the foregoing as a background, we will take up your questions in order.

Your first question, in effect, is whether the contract for printing and binding the official court reports of the Appellate Courts shall be let for a period of two years as required by Section 2080, R.S. 1939. It seems to us that Section 2080 is repealed by implication by the 1945 act since the latter act provides an entirely new procedure for letting the contracts in question. Section 2080 refers solely to contracts let by the Supreme Court. It authorizes the Court to let such contracts and directs it to let them every two years and prescribes the method of advertising and letting. Since the court no longer has the power to let such contracts, said section has no meaning. Had the sections merely directed that contracts for printing and binding the court reports should be let every two years, it might be contended that to that extent said section could still be effective. However, an entirely new setup has been created by the 1945 act which is wholly inconsistent with the directions given to the Supreme Court by Section 2080, and for that reason said section 2080 cannot longer be of any effect.

We find no specific directions to the purchasing agent as to when or for how long he shall let such contracts. Section 80 of the 1945 act, supra, gives that officer broad powers and wide discretion as to letting the contracts. Apparently, he can request bids whenever the case arises, and it is presumed he will offer contracts on such terms as would secure the best bids. However, there are certain limitations upon the powers of all officers to contract on behalf of the state. Section 60, page 1448, Laws 1945, provides as follows:

"No expenditure shall be made and no obligation incurred by any department without the following certifications: (1) Certification by the comptroller pursuant to the provisions of Section 36 of this act; (2) certification by the auditor that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books by the comptroller as an encumbrance on the appropriation and on the allotment, provided that if the obligation shall not be incurred after such certification shall have been entered on the general accounting books as an encumbrance on the appropriation and on the allotment, such certification shall be removed from the general accounting books as an encumbrance on the appropriation and on the allotment. Any officer or employee of the state who shall make any expenditure or incur any obligation without first securing such certifications from the comptroller and the auditor shall be personally liable and liable on his bond for the amount of such expenditure or obligation. To prevent inconvenience and delay, the comptroller and the auditor shall be authorized to establish a system for certification of emergency or anticipated minor obligations and expenditures, and non-budgetary expenditures."

Section 36, which is referred to in the foregoing section, reads in part as follows:

"The division of the budget and comptroller shall have the power and its duties shall be: \* \* \* (2) To certify approval of the incurring of all obligations for the payment of money. As a prerequisite to such certification, the comptroller shall ascertain that the obligation to be incurred is within the work program and budget allotment. Each such certification from the comptroller to the state auditor shall be accompanied by a copy of the purchase order."

Therefore, a valid obligation could not be incurred by the purchasing agent unless he first obtained the certification of the comptroller to the effect that the contract obligation is within the budget allotment and also the certification of the auditor that the obligation is within the purpose of the appropriation, and that there is in the appropriation an unencumbered balance sufficient to pay it. Furthermore, Section 28, Art. IV, of the Constitution provides in part as follows:

"No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

It follows, therefore, that no contract for printing and binding the official reports of the Appellate Courts could be made which incurred an obligation for an amount greater than the unencumbered appropriation for that purpose. Section 23, Art. IV, of the Constitution reads as follows;

"The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, and the 63rd General Assembly shall also make appropriations for the six months ending June 30, 1945. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose.

If, therefore, the appropriation out of which the expense of printing and binding the court reports is for one year only, the purchasing agent would necessarily be limited in his power to contract to the amount provided by said appropriation. If, however, the Legislature appropriated for a period of two years for said purpose, the purchasing agent would be free to contract up to the amount of said appropriation. The limitations of the appropriations would necessarily determine for what period the purchasing agent could make the contract extend. He would, of necessity, have to let a contract for each period provided for by the appropriation.

Your second question is whether Sections 2081, 2082, 2083 and 2085, R. S. 1939, are still in force and applicable to the printing and binding contract in question. Section 2081 provides that the "specifications of the material, the composition, and the workmanship, and all other details necessary to the economical and prompt production of said volumes, as well as all proper safeguards and guarantees such as bid and contract bonds, shall be designated by the supreme court \* \* \*". This section is an express authorization to the supreme court in connection with its powers to let the contracts as set forth in Section 2080. Since Section 2080 no longer has any effect, we think Section 2081 is likewise ineffective. Of course, Section 78 of the 1945 act provides that the purchasing agent shall determine the specifications of the printing "when not otherwise provided by law". It might be contended that as to the Appellate Court reports the method of determining the specifications has been "otherwise provided by law", i. e. by Section 2081. However, said Section 78 further provides that "the clerk of the supreme court shall have authority to determine the typography of work done for the courts, after consultation with the purchasing agent". The act of 1945 shows an intention on the part of the Legislature to give the supreme court some voice in determining the type or style of printing done for the supreme court. Had the Legislature considered that Section 2081 would still be effective, there would have been no reason to insert in Section 78 of the 1945 act the proviso giving the clerk of the supreme court the right to determine the typography of the work done for the courts. If we say Section 2081 is still in force, then we would have two inconsistent provisions as to determining the typography of the printing for the courts. Section 2081 would give the supreme court the right to determine the typography, and Section 78 of the 1945 act would give the clerk of the supreme court the same authority. Since the two provisions are repugnant the later will prevail. For these reasons we think Section 2081 is no longer of any force and effect.

Section 2082 authorizes the Supreme Court to designate the number of copies of each volume of court reports to be printed and bound, and directs that each copy shall be copyrighted in the name of the clerk of the Supreme Court for the benefit of the people of the state. Section 84 of the 1945 act reads in part as follows:

"The state purchasing agent shall except as otherwise directed by the general assembly have the power to determine the number of copies and number of pages of subject material in each document printed under his supervision."

Under the rules of construction heretofore discussed, Section 2082 would be considered as an exception to Section 84 of the 1945 act. Section 84 assumes that there are or may be instances in which authorities other than the purchasing agent will determine the number of documents and reports to be printed. Section 2082 specifically provides for such designation of the number of copies of court reports to be printed. We, therefore, have a specific exception in the 1945 act as to who shall determine the number of court reports to be printed. Moreover, there is no express repeal of Section 2082, and repeals by implication not being favored, we think Section 2082 is still in force.

Section 2083 authorizes the Supreme Court to fix the price at which the court reports shall be sold and gives the court custody of certain printing equipment. We find no specific provision in the 1945 act authorizing the purchasing agent to set a price on the court reports. While Section 2083 gives the Supreme Court specific authority to fix the price at which reports shall be sold and gives the court the custody of the printed reports and authorizes the court to distribute to the proper officers of the state such volumes as are or may be required to be delivered to or distributed through said officers to the officials authorized to receive same, it does not specifically authorize the court to sell said reports. The only volumes said section specifically authorizes the court to dispose of are those which are to be distributed to officials authorized to receive them. However, under the familiar rule that where an officer is given express authority to do an act he is also given such implied authority as is necessary to make the express grant of authority effective, the supreme

court would have the right to sell such volumes as might be demanded by the public. (State ex rel Bybee v. Hackmann 276 Mo. 110, 207 S.W. 64) There would be no point in the legislature providing a price at which the reports could be sold and giving the custody of said reports to the Supreme Court, and not making any provision for actually selling the reports. The power to sell the reports is impliedly embodied in the powers given by said section.

It might be suggested that since Section 82 of the 1945 act provides that "except as otherwise provided by law, the purchasing agent shall be the sales agent for the state to sell any publication which by law may be authorized or required to be sold", the authority to sell the court reports is now vested in the purchasing agent. However, since the supreme court is authorized to determine the number of volumes of court reports to be printed, to fix the price at which the reports shall be sold, to have complete custody of said printed reports and to distribute such reports to officials who are authorized to receive them, we think that the supreme court also has the implied authority to sell the reports to such as may want to purchase. It seems to us that the legislature intended that the supreme court should handle its own reports and the reports of other appellate courts, and that, therefore, the provision of Section 82, last quoted, does not apply to court reports since other provisions have been made by law for their sale.

Section 2085 provides that contracts for printing and binding court reports shall specify the prices at which the contractor will print, bind and deliver reprints of the volumes issued. There is nothing in the 1945 act which is repugnant to the provisions of said section. The purchasing agent is given the power by the 1945 act to contract for the printing and binding of court reports, but the requirement of Section 2085 that he include a certain provision in the contract is not repugnant to the powers given to him by said act. Under the rules of construction heretofore discussed, if section 2085 and the 1945 act can be so construed that both can be given effect, such construction should be adopted. We think this can be done with the result that the purchasing agent can let the contract as provided by the 1945 act but must include in it a provision as required by Section 2085, R. S. 1939.

What we have said answers your third and fourth questions also. Since the purchasing agent does not have the custody and storage of the printed reports, it would not be within his province to contract for such storage. The same applies to the distribution of such reports. The supreme court can make contracts as to storage of the printed reports and other supplies and equipment committed to its custody by Section 2083, R.S. 1939. Being given the custody and control of such reports, matrices, etc., and the sale and distribution of the reports, it necessarily has the power to contract for such storage, distribution and sale, but upon such terms as are reasonable. The court would not be expected physically to store and handle such articles, but it could contract with the printer or such other agency as it chose to keep same.

The construction we have placed upon the statutes referred to in your letter results in the purchasing agent letting the contract for printing and binding the official court reports of the appellate courts but the supreme court controlling the matter of the printing and binding, storage, sale and distribution of said reports in all other respects. This situation is not out of harmony with the general theory of the law. The judicial department of the government is an independent branch and the handling of its own printed decisions, which make up a large part of the law which governs the citizens of the state, is a natural and necessary incident of its function. The supreme court is the over-all superintending authority of the judicial branch, and it is the proper authority to control the distribution and sale of the reports of all the appellate courts, including its own reports.

#### Conclusion

It is, therefore, the opinion of this office that:  
(1) Sections 2080 and 2081, R.S. Mo. 1939 are not in force and effect, having been repealed by implication by the Revenue Act of 1945 (pp. 1449 - 1456, Laws 1945);  
(2) Sections 2082, 2083 and 2085, R.S. Mo. 1939 are still in force and effect; (3) the purchasing agent

cannot enter into a contract for printing and binding the reports of the appellate courts for a longer period than the period of the appropriation currently available for that purpose; and (4) the supreme court may contract for the storage and distribution of the court reports of the appellate courts and that the contract may be with the printing company if the court so elects.

Yours very truly,

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HARRY H. KAY,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR,  
Attorney General.

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