

AFFIDAVITS:
STATE TREASURER:
STATE PURCHASING AGENT:

1. On delivery of those supplies procured through the office of the state purchasing agent and not followed by an invoice with the accompanying affidavit required by Section 26 of House Bill No. 12, 69th General Assembly,

Second Extraordinary Session, it does not come within the jurisdiction of the state purchasing agent to cancel the contract for the supplies as he would under his rules and regulations for breaches of contract.

2. Section 26, House Bill No. 12, 69th General Assembly, Second Extraordinary Session, is **September 22, 1958** meant to have no effect upon the method in which contracts are written and executed by the State of Missouri.

Honorable Elwood Long
State Purchasing Agent
First Floor Capitol Building
Jefferson City, Missouri



Dear Mr. Long:

This is in response to your request for an opinion of July 17th, 1958, which we quote as follows:

"Will you please give us your opinions in regard to purchasing supplies to be paid for out of the 2nd State Building Fund appropriations, with reference to House Bill No. 12, 69th General Assembly (Second Extraordinary Session), Section 26:

(1) On delivery of those supplies procured through the office of the state purchasing agent (with the approval of either the Chief of Planning and Construction or the Director of Public Buildings) and not followed by an invoice with the accompanying affidavit requested, does it come within the jurisdiction of the state purchasing agent to have to cancel the contract for the supplies as he would under his Rules and Regulations for other breaches of contract)?

(2) We accept contracts for supplies with accompanying explanations in bids explaining how they will be provided (that is, whether by the contracting firm or individual or through an arrangement with another person). Would that practice have to be ruled out in these contracts?

A revision of Rules and Regulations for the Procurement Section is now in progress and I would greatly appreciate an early reply from you."

Honorable Elwood Long

It is the opinion of this office that noncompliance with Section 26 of House Bill No. 12 of the 69th General Assembly, Second Extraordinary Session, would not be a reason for the cancellation of a contract for supplies by the State of Missouri. We quote Section 26:

"All bills, claims and demands presented for repairs, remodeling, rebuilding, construction, or any services or material furnished under the provisions hereof, including but not limited to architectural, engineering and consulting services of every kind and nature, shall be accompanied by an affidavit executed by the claimant containing a statement that the claimant has neither directly nor indirectly paid any consideration, either of money or any valuable thing to any person, firm or corporation for services or assistance of any nature whatsoever in securing said bid, contract, employment, or fee, as the case may be."

We believe that Section 26 is not a part of a contract solely because it has been enacted by the legislature. There is no suggestion that it has been incorporated into a contract by agreement of the parties. Rather than as a condition of the contract or a promise of the contract of which there might be a breach, we believe that Section 26 has been enacted as a condition precedent to receipt of payment for performance of such a contract. The party contracting with the state may have fulfilled all of its obligations existing under the contract itself, and it should not be the prerogative of the state to take advantage of the other party by a cancellation of the contract when there has been no breach.

Since the failure of the contracting party to submit the affidavit required by Section 26 does not constitute a breach of contract, it does not come within the jurisdiction of the state purchasing agent to cancel the contract for supplies as he would under his rules and regulations for breaches of contract.

With respect to your second question, we feel that it should be answered in the negative. Section 26 of House Bill No. 12 merely establishes the requirement of an affidavit to be submitted by the person or agency who secures the bid, contract, or employment, or fee, as the case may be. As we have stated in answer to your first question, Section 26 is not a part of the contract between the state and a second party. If the contract permits a

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third party to furnish all or a portion of the supplies, and yet the state is to make payment solely to the second party, that no payment is to be made to other persons mentioned in the contract, Section 26 requires only the second party to submit the affidavit. Therefore, it is our opinion that Section 26 is meant to have no effect upon the method in which contracts are written and executed by the State of Missouri.

CONCLUSION

It is the opinion of this office that:

1. On delivery of those supplies procured through the office of the state purchasing agent and not followed by an invoice with the accompanying affidavit required by Section 26 of House Bill No. 12, 69th General Assembly, Second Extraordinary Session, it does not come within the jurisdiction of the state purchasing agent to cancel the contract for the supplies as he would under his rules and regulations for breaches of contract.

2. Section 26, House Bill No. 12, 69th General Assembly, Second Extraordinary Session, is meant to have no effect upon the method by which contracts are written and executed by the State of Missouri

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON
Attorney General

JBS:mc