

Opinion No. 188.**Public Welfare—Purchases by Board—
Purchasing Agent.**

HELD: 1. The state board of public welfare has the authority to purchase real or personal property necessary and proper to carry out the purposes of Chapter 82, Laws of 1937, and in making such purchases may do so on such terms and conditions and in such manner as it deems proper.

2. The state board in making purchases may do so on competitive bid, or in the open market.

3. The provisions of Chapter 26, Revised Codes of Montana, 1935, has no application to the state board of public welfare.

November 4, 1937.

State Department of Public Welfare
Mr. B. L. McFerran, Purchasing Agent
Helena, Montana

Dear Mr. McFerran:

You request an opinion on the following facts:

The department issued invitations for bids on a quantity of woolen cloth to be given to the sewing room projects of the W. P. A. over the state; these invitations to bid were issued to merchants both in and out of the state; the samples submitted were of such low grade as to practically preclude the purchase of more than a small quantity from any particular bidder; you are advised by the Director of Women's and Professional Projects of the W. P. A. that the materials in question were unsuitable for the purposes intended; namely, for the making of women's and children's coats, skirts, dresses, etc. You further advise that specifications outlined in the invitations for bids were generally not lived up to; that there is an emergency need for these materials, in that they

are to be used for the purpose of clothing children on relief for the winter, and it is necessary that the material be purchased at once in order that the same may be given the sewing rooms for making into garments, and for distribution to the needy before cold weather sets in. The amount involved in this purchase is considerably in excess of \$5,000.00.

Your question is as to whether or not the department may cancel or reject all of any of the bids received under the conditions outlined above, and purchase direct from vendors who can furnish the wanted material, or must the department make a further call for bids.

The answer to this question would hinge upon the proposition of whether or not the department, under the law, is required to advertise for bids and award the contract to the lowest bidder. Incidentally, the question also arises as to whether or not the purchases should be made by or through the state purchasing agent.

In determining the authority or power of any office, board, department or commission of the state, we must look to the act creating it, or to the general law. Chapter 82, Laws of 1937, is the act creating your board and department, and contains the law governing the powers, duties and authority of the department and of the board, together with the general law applicable where said act is silent.

Chapter 26, R. C. M. 1935, creates the state purchasing department, defines the duties of the state purchasing agent, and provides the method and procedure to be followed in the purchase of supplies for the several offices, boards, departments and commissions of the state. Section 285 of this Chapter provides:

"Duties of state purchasing agent—contingent funds for state departments. The state purchasing agent shall, under the restrictions of this act, have full and sole power and authority and it shall be his duty upon approval of the state board of examiners to contract for and purchase or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution, or official.

For the purpose of making such purchases and contracts, the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official. Provided, the state board of examiners may provide a contingent fund for each state department, commission, board, institution, or official, in a sum to be fixed by the state board of examiners, to be used in the payment of urgent contingent expenses that may be necessary for the conduct of the business of such department, commission, board, institution, or official, such expenditures to be thereafter examined and approved by the state board of examiners."

The act further provides that before purchasing, he must advertise for bids and award the contract to the lowest and best bidder. It also provides that after purchases have been so made, payment therefor shall be made upon claims, approved and audited, by warrant drawn by the State Auditor upon the Treasurer.

Section VII of Part I of Chapter 82, provides:

"Authority and activities of the State Department. The State department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act * * *."

Section XIII of Part I of Chapter 82 provides:

"The state board shall have power to **acquire by purchase**, exchange, or gift, **on such terms and conditions**, and in such manner as it may deem proper, and to acquire by condemnation * * * rights, easements, and other property, either real or personal necessary or proper to carry out the purposes set forth in this act * * *." (Underlining ours.)

The appropriations made by the legislature for the purpose of the Welfare Act are "for the administrative costs and other purposes of this act * * *." (See Sec. IV, Part VII.)

Section III of Part VII, provides for an imprest fund, from which fund all disbursements of public assistance

grants and costs of administration are made. And this section also authorizes the department to open and establish a bank account or accounts, which shall be subject to orders drawn by the state department.

Instead of limiting the welfare board by providing a "contingent fund" to be used in the payment of urgent contingent expenses, the legislature in Chapter 82 has provided for an "imprest fund" set aside out of the treasury for the sole and exclusive use and benefit of all the purposes of the welfare department. And the legislature has gone even further in that it has given the department authority to disburse the imprest fund directly rather than by warrant through the state auditor and treasurer.

Chapter 26, R. C. M. 1935, was enacted in 1921, and with but few changes is found in the 1935 Codes as originally enacted. It is a general law governing a particular subject, to-wit, purchases of supplies, while Chapter 82 is a special act passed at a later date. Chapter 82 in part deals with purchases of both real and personal property (Sec. XIII, Part I). In this respect, being a special act of later date, its provisions take precedence over those of the general act, and to such extent amends the general act. It is an elementary rule of law that a special statute dealing with the same subject matter as a general statute is regarded as an exception to, or qualification of, the prior general statute.

"Where a statute deals with a subject in general and comprehensive terms and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any necessary repugnancy between them, as it will also where it is enacted later than the general one, in which event it will be regarded as an exception or qualification of the prior general act."

Franzke v. Fergus County, et al., 76 Mont. 150;

Daly v. Torrey, 71 Mont. 513.

Section XIII of Part I, therefore gives the state board authority to acquire by purchase, exchange, or gift on such terms and in such manner as it may deem proper, both real and personal property.

It is therefore my opinion that the state board of public welfare may purchase the materials mentioned in your letter either by calling for competitive bids, or by purchase in the open market without advertising, and, in so far as purchases are concerned, the board is not subject to the provisions of Chapter 26, Revised Codes of Montana, 1935.

However, whenever possible and expedient, it would be better practice from many considerations, that purchases of large volume or quantity be made only after advertising for competitive bids.