

Fish and Game Fund—Funds—State Purchasing Agent— Requisitions.

Expenditures from the fish and game fund authorized by section 3670 constitute one of the exceptions to the jurisdiction of the state purchasing agent and are not subject to his jurisdiction.

J. E. Murphy, Esq.,
State Purchasing Agent,
Helena, Montana.

October 10, 1927.

My dear Mr. Murphy:

You state that the fish and game commission have made certain large purchases without submitting a requisition to your department and without procuring a purchase order from your department. You ask my opinion as to whether the fish and game commission is subject to the jurisdiction of the state purchasing agent, the same as any other commission or department of the state government.

The answer to your inquiry necessitates an examination of the several statutes defining the powers of the state purchasing agent and of the fish and game commission. Section 285 of the revised codes of Montana of 1921, a part of the act creating the state purchasing department and agent, gave the state purchasing agent sole and full power and authority, subject to the 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.

In 1923 the legislature enacted chapter 66, section 5 of which reads as follows:

“Unless otherwise provided by law, the State Purchasing Agent shall have exclusive power, subject to the consent and approval of the Governor, to let to the lowest bidders and enter into contracts with the lowest bidders, for the furnishing of all supplies, stationery, paper, fuel, water, lights, and other articles required by the Legislative Assembly and all other offices, departments, boards, commissions and institutions of the State.”

It will be observed, therefore, that the act of 1923 expressly recog-

nizes such exceptions to the power of the state purchasing agent as may be "otherwise provided by law."

Section 32 of chapter 59, laws of 1927, provides for the creation of a special fund designated as the state fish and game fund. The section then provides:

"Said fund is hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the State Fish and Game Commission under the terms of this Act, and said funds shall be expended for any and all such purposes, by said Commission, subject to the proper audit and allowance by the State Board of Examiners and by appropriation by the Legislative Assembly at each session."

Other sections of the fish and game law, notably section 3653, give the fish and game commission full power and authority to use so much of the fish and game fund as may be necessary for the carrying out of the provisions of the fish and game law and the protection and propagation of fish and game. Authority to make expenditures for the purpose aforesaid is given the commission, and the manner of expenditure thereof is provided by section 3670 above quoted. By that section the fish and game commission is authorized to expend said fund for any and all the purposes authorized by the act, and it is expressly stated that such expenditures shall be subject to audit and allowance by the state board of examiners.

It is my opinion that expenditures of the fish and game fund constitute one of the exceptions to the jurisdiction of the state purchasing department and agent recognized by section 5 of chapter 66, laws of 1923, above quoted.

It is therefore my opinion that in the expenditure of moneys in the state fish and game fund, the state fish and game commission is not subject to the jurisdiction of the state purchasing agent.

Very truly yours,

L. A. FOOT,
Attorney General.