

Opinion No. 47.

Purchasing Agent—Board of Examiners, Authority of.

HELD: The State Purchasing Agent is without authority to disapprove a requisition presented by a state institution, board or commission.

A requisition presented by a state institution, board or commission may be disapproved only by the State Board of Examiners.

April 15, 1939.

Mr. I. S. McQuitty
State Purchasing Agent
Helena, Montana

My Dear Mr. McQuitty:

You have submitted for my opinion the question as to whether the state purchasing agent has the authority to disapprove a requisition presented by a state institution, board, or commission.

Under the provisions of Section 287, R. C. M., 1935, the state purchasing agent has authority to enter into a contract or make a purchase upon a

requisition approved by the proper institution, department, board, or commission. However, no purchase could be made of furniture, fixtures, apparatus, or equipment until the requisition had been submitted to the State Board of Examiners and an order made by such board authorizing the same. Under the provisions of Section 287, as amended by Chapter 51, L. 1939, the purchasing agent can enter into a contract or make a purchase upon a requisition presented by the proper institution, department, board, or commission, and subject to the same exception as was provided for in Section 287. Such requisition "must be approved by the state purchasing agent." In other words, the approval of said requisition by said official is mandatory. He cannot disapprove of the same unless disapproved by the board of examiners, and if disapproved by said board the disapproval by the purchasing agent is an idle and unnecessary act. (Section 8761; *Le Claire v. School District*, 74 Mont. 385.) The act of the purchasing agent in approving the requisition is a ministerial duty and mere formality and serves no purpose other than to give public notice of his authority to make the purchase or enter into the contract. If the purchasing agent would refuse to perform the plain mandate of the statute and affix his signature of approval upon the requisition, then upon the board's approval and authorization the same would be deemed approved as required by Chapter 51, supra, under the statutory rule which provides, "That which ought to have been done is to be regarded as done." (Section 8758; *Whorley v. Patton, et al.*, 90 Mont. 461.) For instance, the clerk of the district court must perform certain duties such as to transfer and file pleadings, (Sections 9100, 9106). Such duties are mandatory, yet no one would contend that the clerk acts in other than a ministerial capacity.

The purchasing agent's authority and discretion are confined to the "purchase," that is, mostly determining the price, quality, service, advertising, and similar matters. The necessity, or policy, circumscribed by the appropriation, is left to the determination of the department, board, or institution, or to the board of examiners, with veto powers vested exclusively in said

board. (Section 20, Article VII, of the Constitution; Chapter 25, Vol. 1, R. C. M., 1935; State v. Brannon, et al., 86 Mont. 200.)