

1676

1. EXCHANGE DEPARTMENT, STATE—SUPERINTENDENT OF PURCHASES AND PRINTING—NOT LIMITED IN OPERATION OF EXCHANGE DEPARTMENT FOR WHICH HE IS REQUIRED TO MAKE PURCHASES—FUNCTION APPLIES TO ALL DEPARTMENTS, OFFICES AND AGENCIES OF STATE UNLESS EXCLUDED BY SOME PROVISION OF LAW—SECTION 196-12 G. C.
2. PROVISIONS, SECTION 196-12 G. C., DO NOT INCLUDE PROPERTY, SUPPLIES AND EQUIPMENT—PROPERTY, ANY EDUCATIONAL INSTITUTIONS OF STATE—INSTITUTIONS EXCLUDED BY SECTION 196-4 G. C.
3. “DEPARTMENT”—SECTION 196-12 G.C.—APPLIES TO AND INCLUDES ALL DEPARTMENTS AND OFFICES, BOARDS AND COMMISSIONS—EXCEPTION, EDUCATIONAL INSTITUTIONS OF STATE AND COMMISSIONERS OF PUBLIC PRINTING—FURTHER EXCEPTIONS, SUCH OTHER DEPARTMENTS, OFFICES OR AGENCIES AUTHORIZED BY LAW TO DISPOSE OF SURPLUS PROPERTY, SUPPLIES OR EQUIPMENT.

SYLLABUS:

1. The superintendent of purchases and printing is not limited in the operation of the state exchange department organized under Section 196-12, General Code, to those departments for which he is required to make purchases, but such function applies to all departments, offices and agencies of the state, unless excluded by some provision of the law.

2. Section 196-12, General Code, providing for the establishment by the state purchasing agent, of a state exchange department, does not include property, supplies and equipment belonging to any of the educational institutions of the state, which institutions are excluded by the provision of Section 196-4, General Code.

3. The word “department” as used in Section 196-12, General Code, applies to and includes all departments and offices of all elective and appointive state offices, boards and commissions of the state, except the educational institutions of the state and the commissioners of public printing, and except such other departments, offices or agencies of the state as are authorized by law to dispose of their surplus property, supplies or equipment.

Columbus, Ohio, July 28, 1952

Mr. J. W. Bush, State Purchasing Officer
Division of Purchases and Printing
Department of Finance
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Section 196-12 O.G.C. provides for establishment by the State Purchasing Agent of a State exchange department. The second paragraph of this section reads in part, as follows: ‘Whenever any supplies or equipment in any department of the State are not required for use in such department—.’

“We respectfully request your opinion as to the meaning intended by the word ‘department.’ Specifically, should property declared as salvage by the State universities or any other unit of State government for which we do not normally do the purchasing, dispose of the salvage material they accumulate or should all State departments and any unit of State government dispose of all salvage material through our department?”

By an Act passed March 21, 1917, found in 107 Ohio Laws, page 422, the state purchasing department was established and its duties defined. At that time, it was attached to the office of the Secretary of State, and was placed under his supervision. This Act included an amendment of Sections 1846 and 1847, of the General Code, relating to articles manufactured in penal and correctional institutions of the state and their disposition for use in other state departments and institutions. The remaining portion of the Act was codified as Sections 196-1 to 196-18, inclusive, of the General Code. In the enactment, four years later, of the Administrative Code, Sections 154-1 to 154-58, General Code, certain administrative departments were set up, each headed by a director appointed by the Governor.

By Section 154-37, General Code, which is a part of the Administrative Code, the office and duties of the state purchasing agent and also the functions of the “commissioners of public printing” hereinafter referred to, were transferred to the control of the Department of Finance, and placed under the “superintendent of purchases and printing.”

Section 196-4, General Code, reads as follows :

“The secretary of state and the auditor of state shall, on or before the first day of July, 1917, and thereafter whenever they deem it necessary, meet with the state purchasing agent and determine what supplies and equipment, required for the use and maintenance of the departments and offices of all elective and appointive state officers, boards and commissions, shall be purchased and furnished by the state purchasing department. Provided, however, that supplies and equipment for boards of state supervisors and boards of state inspectors and supervisors of elections, for the courts of appeals, courts of common pleas and the supreme court, for the institutions under the direction of the state board of administration, for the maintenance of the Ohio national guard, and for the argicultural experimental stations of the state, shall not be included in such lists of supplies to be purchased and furnished by the state purchasing department. Nor shall this act (G.C. §§ 196-1 to 196-18, §§ 1846 to 1847) apply to or affect the educational institutions of the state or the commissioners of public printing.”

It will be noted that by the terms of this section the purchasing agent is authorized and required to purchase supplies and equipment for all of the departments and officers of all elective and appointive state officers, boards and commissions except those specifically exempted.

Section 196-12, General Code, to which your letter calls attention, provides for the establishment of a “state exchange department.” It reads in part :

“The state purchasing agent shall establish a state exchange department. Whenever any supplies or equipment in any department of the state are not required for use in such department, or whenever any property of the state is to be abandoned, or whenever any department of the state is abolished or discontinued, the officer in charge of such department or property shall notify the state purchasing agent thereof. The state purchasing agent shall take possession of such supplies or equipment not required for use, or property to be abandoned, and for supplies, equipment, records, books and papers of such abolished or discontinued department. * * *”

It will be noted that this section does not provide that the exchange department shall receive and dispose of only those goods which the purchasing agent is authorized to purchase, but includes “any department of the state.” I see no reason why this department of exchange should be limited to those departments for which the purchasing agent makes

the purchases. From the standpoint of economy and good public business, it would seem logical that the General Assembly would undertake and did intend to provide a general office or depot through which all discarded equipment purchased with state funds could be transferred to some other department which could make use of it.

There are two exceptions to this general conclusion: First, the act itself, in Section 196-4, expressly provides that "this act," meaning Sections 196-1 to 196-18, inclusive of the General Code, and Sections 1846 to 1847, General Code, shall not "apply to or affect the educational institutions of the state or the commissioners of public printing." Since Section 196-12 is a part of the act, the operation of that section is expressly excluded, so far as the institutions just named are concerned. Second, there would be a limitation on the power of the purchasing agent to dispose of surplus or discarded materials in those departments which by law are given the express right to make disposition of the same. An example of this is found in the state highway department, where it is provided in Section 1178-29:

"The director, after notice as hereinbefore provided with respect to purchase, is authorized to sell any machinery, tools, equipment, material or supplies unfit for use or not required by the department. The director is also authorized to exchange such machinery, tools and equipment for new equipment in the manner herein provided for and pay the balance of the cost of such new equipment from the maintenance and repair fund of the department. * * *"

As to the meaning of the word "department", as used in Section 196-12, it seems important to note that the act containing that section was passed some years before the passage of the Administrative Code, which established certain departments in the state government. The Administrative Code, in Section 154-2, defines "department" as used in "this chapter" as meaning "the several departments of state administration enumerated in Section 154-3 of the General Code." The chapter in question, contained nothing but the Administrative Code, and the provisions to which I have called attention, governing the powers of the purchasing agent were in another chapter.

It appears to me that the words "department of the state", as used in Section 196-12, were used in a broad sense, and would have the same scope as has the provision of Section 196-4 supra, which authorizes the

purchasing agent to purchase supplies "required for the use and maintenance of the departments and offices of all elective and appointive state officers, boards and commissions." That the word "department" has this broad meaning is further indicated by the fact that the General Assembly in dealing with the purchasing agent's office, and also the exchange features, uses the word "department" in both cases.

Accordingly, in specific answer to your questions it is my opinion :

1. The superintendent of purchases and printing is not limited in the operation of the state exchange department organized under Section 196-12, General Code, to those departments for which he is required to make purchases, but such function applies to all departments, offices and agencies of the state, unless excluded by some provision of the law.

2. Section 196-12, General Code, providing for the establishment by the state purchasing agent, of a state exchange department, does not include property, supplies and equipment belonging to any of the educational institutions of the state, which institutions are excluded by the provision of Section 196-4, General Code.

3. The word "department" as used in Section 196-12, General Code, applies to and includes all departments and offices of all elective and appointive state offices, boards and commissions of the state, except the educational institutions of the state and the commissioners of public printing, and except such other departments, offices or agencies of the state as are authorized by law to dispose of their surplus property, supplies or equipment.

Respectfully,

C. WILLIAM O'NEILL

Attorney General