



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

May 2, 1975

Opinion No. 75- 200

The Honorable Kenneth L. Elder  
Department of Finance and Revenue  
City of Topeka  
Municipal Building  
Topeka, Kansas 66603

Dear Commissioner Elder:

Section 2a-103 as amended of the Code of the City of Topeka commences thus:

"All purchases of materials, supplies, services or equipment, the cost of which can reasonably be expected to exceed \$2,000 except as provided in Section 2a-204, shall be by sealed proposals invited by advertisement published by the City Clerk in the official City Paper."

Apparently controversy surrounding the purchase of 176.34 square yards of Tahiti #7881 carpet from the J. C. Penney Company, an equal area of 50 oz. pad, and installation services therefor, prompts an inquiry whether the purchase was made in compliance with the quoted portion of the municipal ordinances of the City of Topeka.

You enclose three sets of documents pertaining to this purchase, each including a sales slip and work order agreement dated September 26, 1974, a statement rendered by the vendor dated October 15, 1974, and a City of Topeka claim voucher, dated October 17, 1974.

One claim voucher, for a total amount due of \$1,346.40 and signed by one Ginger Brinker, identifies the materials and services

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purchased thereby as 108 square yards of Tahiti #7881 carpet, priced at \$9.50 per square yard, for a total of \$1,026.00; 90 square yards of pad at \$1.40, for a total of \$126.00; and "108 sq. yds. Labor" at \$1.80 for a total of \$194.40. This voucher refers to the City Attorney's office, and identifies the department chargeable for the purchase by the number 0002.

A second claim voucher presents a claim for carpet, pad, labor, and an additional charge "to level floor" aggregating \$589.21, which is signed by one Linda C. Johnson. On this voucher, there is inserted after the printed words "General Fund," "Weights and Measures," and the department chargeable with this expense is identified by number 0024, a different number than appearing on the first voucher described above. The vendor's statement concerning this purchase identifies the addressee of Office of Weight and Measures.

The third voucher, also for carpet, pad and labor, recites an aggregate claim of \$338.71, identifies the party to whom the goods are delivered as the City Attorney's Office, Consumer Protection Division, and identifies the department chargeable with this expense by no. 1012. This voucher is signed by one Linda C. Johnson.

Because the aggregate purchases total \$2,273.92, you question whether the purchase was made in violation of the city ordinance.

You enclose a memorandum dated October 29, 1974, signed by Mr. Turner, Topeka city attorney, addressed to the mayor and board of city commissioners, interpreting the ordinance thus:

"It is the opinion of this office that the \$2,000.00 limitation on expenditures is to be construed as applying to purchases of individual departments separately and not jointly. Under such an interpretation each individual department would be allowed to spend up to the \$2,000.00 total on any purchase without being forced to comply with the bidding procedure. In such a case each department would be required to operate separately out of their own designated budget. In the event that two or more departments were participating in the same project, they would

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each be allowed to expend up to the \$2,000.00 limit without falling within the purview of the ordinance in question. Under such circumstances each department would in effect be conducting a separate transaction."

At 10 McQuillin, Municipal Corporations, § 29.34, the writer states in pertinent part thus:

"And where a municipality is prohibited from letting contracts involving an expenditure of more than a specified sum without submitting the same to competitive bidding, it cannot divide the work and let it under several contracts, the amount for each falling below the amount required for competitive bidding. However, legally separable and factually separate transactions, each of which is below the amount required for competitive bidding, but in the aggregate exceeding such amount, do not require such bidding merely because they were ratified by a single act."

Under the ordinance, "[a]ll purchases of materials, supplies and services or equipment, the cost of which can reasonably be expected to exceed \$2,000" must be bid, with exceptions not pertinent here. The question arises, purchases by whom. Presumably each organizational department has separate purchasing authority. Each of the claim vouchers identifies the department chargeable with the purchase by a different number; similarly, different numbers are used to designate the chargeable accounts. The purchases are thus legally separable and separate. The ordinance applies to purchases, without more, and thus applies to any purchase by an entity or department of the city which is legally entitled to make a purchase, which has separate budgetary authority therefor, and which draws upon that separate budgetary and legal authority to make the purchase.

From the documents which you enclose, it clearly appears that each of the purchases in question was made by or on behalf of a separate department, that separate funds were drawn upon for each purchase, and that different departments were charged

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therefor. Two of the city vouchers are executed by the same person, one Linda C. Johnson. This may be taken as suggesting, inferentially, that the two purchases are substantially related, although the vouchers indicate that different departments and accounts are chargeable with the purchases. However, the aggregate sum charged by these two vouchers does not exceed \$2,000.00.

Thus, we cannot but concur in the analysis and interpretation of the ordinance stated by Mr. Turner. We find no basis upon which to conclude that the purchases constitute a violation of section 2a-103.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj

cc: Mr. Dan E. Turner  
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Municipal Building  
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