



STATE OF KANSAS

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Attorney General

September 25, 1975

ATTORNEY GENERAL OPINION NO. 75- 379

Mr. W. Keith Weltmer, Secretary
Department of Administration
2nd Floor - State Office Building
Topeka, Kansas 66612

Re: Department of Administration--Central Motor Pool--
Purchase of Motor Vehicles

Synopsis: The prohibitions of K.S.A. 1974 Supp. 75-4609 apply only to the purchase of motor vehicles by which the state acquires title thereto, and does not apply to the acquisition of motor vehicles by lease.

* * *

Dear Secretary Weltmer:

You advise that a question has arisen in the administration of the state motor pool law, involving the interpretation of K.S.A. 1974 Supp. 75-4609, which commences thus:

"From and after the effective date of this act, no state agency, except the governor, shall purchase any passenger motor vehicle, except under the following conditions:

(a) Moneys for the purchase of such passenger motor vehicle are included within funds appropriated for the state agency and the purchase has been approved by the secretary of administration.

* * *

(c) the purchase price of the passenger motor vehicle, exclusive of any such additional systems or equipment, is not in excess of such amount as may be available from funds appropriated for such agency."

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You indicate that some state agencies have in the past requested, and are presently requesting, the Division of Purchases to lease motor vehicles, with the view that lease acquisition escapes the prohibition of the statute.

As you indicate, it was the apparent legislative intent to provide for centralized control over all state agencies, an intent which may be difficult to implement completely if agencies are permitted to lease motor vehicles free from the requirements of the central motor pool law.

This question has been the subject of differences in prior years between staff of this office and the chief attorney for the Department of Administration. Prior correspondence to this office from the departmental attorney includes references to *City of Enterprise v. Smith*, 62 Kan. 815, 62 Pac. 324 (1900), in which the court states thus:

"The word 'purchase' has two significations -- a popular but restricted one, and a legal but enlarged one. The definition of the word in its legal and general sense is given as follows: 'A term including every mode of acquisition of estate known to the law, except that by which an heir on the death of his ancestor becomes substituted in his place as owner by operation of law.' (Bouvier.) Blackstone defines the word in its legal and enlarged sense in the same way, but, after doing so, says: 'Purchase, indeed, in its vulgar and confined acceptation, is applied only to such acquisitions of land as are obtained by way of bargain and sale of money, or some other valuable consideration.' (2 Bal. Com. 241.) 'A purchase, in the ordinary and popular acceptation of the term, is the transmission of property from one person to another, by their voluntary act and agreement, founded on a valuable consideration. But, in judgment of law, it is the acquisition of land by any lawful act of the party, in contradistinction to acquisition by operation of law; and it includes title by deed, title by matter of record, and title by devise.' . . . 'The word "purchase," in common sense, means no more than when a man gives money for anything'"

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In *Galloway v. Road Improvement District No. 4*, 143 Ark. 338, 220 S.W. 450 (1920), the court held that a road district which was organized under statutes which authorized it to purchase material and implements to carry on the work of improvements, may lease road building machinery, for the word "purchase" was a mere direction as to the means of exercising power, and included the power to lease as well as to accept a donation.

There is no basis for such an implication here. K.S.A. 1974 Supp. 75-4603 states thus:

"To the extent that funds are available therefor, and within the limitations of section 9 of this act, the secretary of administration may *purchase or otherwise acquire* in the manner provided by K.S.A. 75-3739 additional motor vehicles as he may deem necessary for the central motor pool or any branch thereof. . . . The title to all motor vehicles assigned to or *purchased or acquired* for the central motor pool or any branch thereof shall be in the name of the department of administration, *except motor vehicles acquired by lease.*" [Emphasis supplied.]

Thus, the legislature distinguished in this section between purchase of automobiles, and acquisition thereof otherwise, the latter including acquisition by lease. In K.S.A. 1974 Supp. 75-4610, the legislature included automobiles which are leased by the state, as well as those owned by the state:

"From and after July 1, 1973, every vehicle owned or leased by the state shall display vehicle license tags manufactured at the state penitentiary."

Similarly, sections 11 and 12 of the 1972 enactment refer to state-owned as well as leased automobiles.

There are, thus, two modes of acquisition recognized under the act, by purchase and by lease. Only the former is addressed by K.S.A. 1974 Supp. 75-4609.

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As in the *Galloway* case, above, involving statutes conferring authority upon political subdivisions to "purchase" property, the courts have from time to time construed "purchase" as including authority to lease. In such instances, generally, the authority which was granted was described only as purchasing authority, thus permitting the inference that the legislature did not intend to prohibit acquisition of interests in property or equipment by a lesser-included means, as it were, such as by lease. In section 3 of the act creating the central motor pool, however, the legislature expressly recognized that the Secretary of Administration might "purchase or otherwise acquire" motor vehicles, acquisition by lease being expressly recognized as a mode of acquisition other than by purchase. There is no warrant for construing the term "purchase" in section 9 of the 1972 act more broadly than the term is used in section 3 of the act.

Accordingly, it is my opinion that the term "purchase" as it is used in K.S.A. 1974 Supp. 75-4609 does not include the leasing of automobiles, and that the prohibition of that section applies only to the purchase of motor vehicles and not to the acquisition of motor vehicles by lease. That section forbids the purchase of automobiles unless moneys therefor are included in funds appropriated for the agency, and unless the purchase price is not in excess of such amount as may be available from funds appropriated for such agency. Ordinarily, funds for the purchase of automobiles will be included as capital outlay appropriations. The lease of personal property would not ordinarily constitute a capital outlay, under prevailing budgetary practice, as I understand it.

Yours very truly,



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