

CHAPTER 16

DEPARTMENT OF ADMINISTRATION

16.01 COMMISSIONER OF ADMINISTRATION

HISTORY. Amended, 1949 c 739 s 1; 1951 c 713 s 3.

Bias of administrative officers. 32 MLR 199.

Administrative procedure act. 32 MLR 217.

Administrative discretion in insurance matters. 32 MLR 259.

16.02 POWERS, DUTIES

Amended, 1947 c 365 s 5; 1953 c 745 s 5.

Illegality of contingent fee contract relating to dealings with administrative officials. 34 MLR 252.

Appeal by an administrative agency from judicial reversals of its orders. 34 MLR 550.

Where a board or commission has been empowered to make regulations and to conduct examinations in the performance of the police power, the law is to be interpreted as though it conferred only the power and right to make reasonable regulation and to conduct reasonable examinations. Pure legislative power, which can never be delegated, has the authority to make a complete law; complete as to the time it shall take effect and as to how it shall apply; and to determine the expediency of the enactment. If the law furnishes a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the pertinent facts to which the law applies, so that the law takes effect upon these facts by virtue of its own terms, and not according to the whim or caprice of the administrative officers, the discretionary power delegated to the board or commission is not legislative. *Lee v Delmont*, 228 M 101, 36 NW(2d) 530.

As long as the specifications in the instant inquiry did not contain a uniform form of escalator clause upon which all the bidders might bid, the letting of the contract to any bidder whose bid contains such an unenacted clause would be improper. If new bids are received after due notice, bids with escalator clauses must not only be based upon specifications setting out standard bases of adjustment, but a maximum cost must be stated in each bid. OAG Nov. 14, 1947 (707-B-7).

A stipulation in a contract for payment of a certain sum per day for each day's delay in completing a contract, as liquidated damages, is enforceable. It must bear some reasonable proportion to the loss actually suffered. It must not be a penalty. OAG Nov. 14, 1947 (844-A-3).

Provision in contract for change in price on account of change in production labor costs does not authorize change in price on account of change of cost of supplies. OAG Dec. 11, 1947 (980-B).

The commissioner of administration, with the approval of the governor, may lease buildings not needed for public use. OAG Dec. 17, 1947 (89-B).

Notwithstanding that a state officer must not incur a state indebtedness in excess of that authorized by the legislature, the commissioner of administration is authorized to proceed in the making of contracts for construction in part of buildings proposed under Laws 1945, Chapter 593, Section 1, and under the allocation of funds authorized under Laws 1947, Chapter 534, Section 1, Subdivision 1, but in no case is the commissioner empowered to exceed the amount of appropriation made for the different institutions in question. OAG April 17, 1948 (9-A-39).

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The commissioner of administration may provide office space for all state agencies, including the state board of examiners of nurses. Board members are entitled to mileage, compensation and expenses in attending meetings outside of the city when necessary. OAG March 7, 1949 (905-H).

The legislature has conferred upon the commissioner of administration the authority to fix meal allowances governing state officers and employees who travel on state business, and sections 15.041 to 15.049 are inapplicable to a regulation promulgated by the commissioner. OAG Aug. 3, 1949 (980-A-15).

The commissioner of administration may make rules relative to travel of state officers on state business and the expenses thereby incurred. Under Regulation 37 relative to the use of official cars, no provision is made by which the parking expense of a state officer may be paid by the state. OAG Aug. 16, 1949 (980-A-15).

State officers and boards have only the power and authority expressly conferred upon them by law, or which is necessarily incident to the exercise of the powers and authority expressly conferred upon them. No authority has been granted to the commissioner of education or to the teachers college board to demolish Ogden Hall and build a new physical education building thereon. OAG March 17, 1950 (9-A-41).

The commissioner of administration is authorized to sell surplus law books at a reduced price. OAG Aug. 1, 1950 (500).

Public property not needed for public use may be rented by the commissioner of administration with the approval of the governor. A crop contract lease should be drawn to keep within the statutory authority. OAG April 6, 1951 (89-B).

The commissioner of administration may prescribe the form, manner, and time of reports of acquisition and disposition of realty and personalty maintained by departments and agencies. OAG Mar. 21, 1952 (980-A).

The commissioner of highways may enter into a contract for the rental of automobiles for state purposes, but he may not enter into a joint contract with employees for rental of automobiles for both state and personal purposes. OAG Aug. 5, 1952 (229-A-2).

The department of public welfare may purchase the personal property referred to in Laws 1953, Chapter 553, independent of the controls for purchases vested in the commissioner of administration. But, in the absence of express statutory authority, the power to sell such personal property cannot be delegated to the commissioner of public welfare. Such authority to sell rests with the commissioner of administration. OAG Jan. 7, 1954 (980-A-11).

16.023 STATE'S SHARE OF PROPERTY FOUND PUT INTO GENERAL REVENUE

Abandonment of personal property; intent. 37 MLR 483.

16.05 RULES

Though there has not been a compliance with the provisions of section 15.042, if the commissioner of administration has complied with the provisions of section 16.05, his travel regulation regarding meal allowance is valid and effective. OAG Aug. 3, 1949 (980-A-15).

16.06 SUPPLIES, MATERIALS; PURCHASE

Where it is planned to purchase or construct motion picture and other facilities to be used to encourage the employment in industry of handicapped persons, sections 16.06 to 16.08 do not require bids from contractors. The contract or duty contemplated is not included in the specifications of the above cited sections. OAG Nov. 12, 1947 (980-A-11).

If the commissioner of administration finds that aspen is a large natural resource; that high quality hardboard may be produced from the aspen; and that by

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reason of the removal of other natural resources from a certain section of the state, unemployment will result presently in the future; that the construction and operation of a pilot plant to demonstrate the commercial feasibility of the manufacture of such hardboard; such compensation under the circumstances is such that may call for immediate action and the commissioner is within his powers to authorize the iron range resources and rehabilitation agency to construct and operate the pilot plant. OAG July 20, 1948 (416-B).

16.07 COMPETITIVE BIDS

HISTORY. 1939 c 431 art 2 s 7; 1941 c 281 s 1; 1941 c 478 s 1; 1945 c 370 s 1; 1945 c 556 s 1, 2; 1947 c 112 s 1; 1947 c 238 s 1; 1949 c 189 s 1; 1951 c 36 s 1; 1951 c 343 s 1; 1953 c 568 s 1, 2; 1953 c 671 s 1.

Municipal corporations; liability on ultra vires contracts; quasi-contract; ratification. 34 MLR 46.

Division of employment and security may, without requiring bids, produce a motion picture planned to induce employment of handicapped persons in industry. OAG Nov. 12, 1947 (980-A-11).

Provision in contract for change in price on account of change in production labor costs does not authorize change in price on account of change of cost of supplies. OAG Dec. 12, 1947 (980-B).

Where a purchase was made by a county board of education and the contract was let on a competitive bid, the transaction must be executed as made. OAG May 11, 1948 (166-B).

A bid on a state contract must be in substantial compliance with the specifications. OAG June 2, 1950 (980-B).

16.08 CONTRACTS AND PURCHASES

Right of taxpayer to enjoin or avoid a contract awarded on competent bidding in a case where an official is financially interested in the contract. 35 MLR 322.

Where the specifications required that a certified check at five percent of total bid be attached to and submitted with bid, and where total bid equalled the sum of \$69,610, including bid on one unit of selective call equipment for mobile units as specified, certified check in the sum of \$3,500 was sufficient to comply with described specifications. *Sutton v City of St. Paul*, 234 M 263, 48 NW(2d) 436.

Whether a variance gave the bidder a substantial advantage or benefit is not the sole test for determining if such variance is material. Unless the bid responds to call and specifications in all material respects, it is not a bid but a new proposition. So tested, bid which specified receiver attenuated at 65 decibels for spurious image response, where specifications called for receiver attenuated at 85 decibels for spurious response, it constituted a new proposal and hence was properly rejected. *Sutton v City of St. Paul*, 234 M 263, 48 NW(2d) 436.

In selecting lowest responsible bidder a municipality may exercise a reasonable discretion. Consideration other than price may be utilized, such as, quality, suitability and adaptability of the article to be purchased for the use for which it was intended. Where it appears that the commission's choice is based upon a substantial difference in quality, suitability, and adaptability, its action will not be interfered with. *Duffy v Village of Princeton*, M, 60 NW(2d) 27.

Where it is planned to purchase or construct motion picture and other facilities to be used to encourage the employment in industry of handicapped persons, sections 16.06 and 16.08 do not require bids from contractors. The contract or duty contemplating is not included in the specifications of the above cited sections. OAG Nov. 12, 1947 (980-A-11).

In letting a contract for insurance the low bid on insurance premium is construed to be the lowest definite premium bid and not a bid based upon an estimated

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premium based on a quoted premium less anticipated dividend. OAG Mar. 28, 1949 (980-A-11).

The general rule is that the lowest bid may be rejected, if in the exercise of an honest discretion, another seems to be better for the object to be accomplished, subject to such modification in Minnesota to the extent of a court of opinion holding that if the bidders submit bids, materials, or equipment which comply with the specifications, the authorities cannot take upon themselves the consideration of the quality and adaptability in determining who is the lowest responsible bidder. OAG Aug. 10, 1950 (707-A-4).

Where identical bids are received, a city may accept one of the identical bids if there is no collusion between the bidders. OAG Oct. 2, 1950 (707-A).

A bidder who submits a bid through material mistake may be relieved from such bid. OAG Oct. 31, 1952 (707-A).

The time within which construction is to be completed, if advantageous and beneficial, is material and a factor which is proper to take into consideration in awarding a contract. OAG Dec. 1, 1952 (707-A-4).

16.09 CONTRACTS AND LEASES; APPROVAL; FILING; FORMS

The correct order of procedure in processing contracts to which the state is a party is as follows: The head of the interested department of the state is responsible for the preparation of the contract if it is to be prepared by the state, and if necessary, he procures the advice and assistance of the attorney general. When it has been prepared it is signed by the head of the interested department on the original and necessary copies, and the signature of the other party is secured. All copies are then sent to the commissioner of administration who approves or disapproves, or in some instances executes the contract. The original and all copies are then forwarded to the attorney general who approves or disapproves as to form or legality and returns all copies to the commissioner of administration. All copies are then forwarded to the auditor for encumbrance, who keeps the original and returns all copies to the commissioner of administration for distribution. OAG Aug. 8, 1947 (980-B).

16.10 SIGNED BY HEAD OF DEPARTMENT

HISTORY. Amended, 1949 c 189 s 2.

Board of nurse examiners may, under section 148.191, employ an executive secretary of the board and give her liberal powers making her the administrative head of the department, but may not authorize her to perform duties imposed by law upon other officers, such as the head of the department. OAG Aug. 8, 1947 (905-H).

16.11 MEMBERS OF DEPARTMENT, NO FINANCIAL INTEREST IN CONTRACTS

A bartender in an on-sale liquor store owned by his wife may qualify as village mayor. OAG Jan. 20, 1950 (90-E-4).

16.12 STANDARDS FOR SUPPLIES, MATERIALS, EQUIPMENT

Municipal corporations; liability on ultra vires contracts; quasi-contract; ratification. 34 MLR 46.

A bid on a state contract must be in substantial compliance with the specifications. OAG June 2, 1950 (980-B).

16.16 ALLOTMENT AND ENCUMBRANCE

HISTORY. 1939 c 431 art 2 s 16; 1949 c 230 s 1; 1951 c 503 s 1 (53-180).

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The railroad and warehouse commission, in the absence of a showing of hardship, is required to furnish the commissioner of administration, with estimates in detail as to what overtime must be allowed for each type of employee in the grain inspection department, stating the location and the month. OAG June 18, 1947 (215-A-3).

16.165 FEDERAL AID ADMINISTRATIVE BUDGETS, REVIEW

HISTORY. 1953 c 461 s 1.

16.17 APPROPRIATIONS TO REVERT TO STATE TREASURY

A revolving fund established under the 1947 biennial appropriations act, providing for an adjustment of a schedule of charges for the auditing of books, records, and accounts of certain municipalities, so that the charges should be sufficient to cover all costs of examination, was a general permanent law and not an appropriation act. It impliedly repeals the 1945 act limiting salary charges for examinations to \$10 per day. *State v City of Duluth*, M, 56 NW(2d) 416.

An appropriation made available to the state teachers college board for "alterations to Tweed Hall," and not used prior to the transfer of the Teachers College at Duluth to the University of Minnesota can not be transferred and the fund must be canceled into the general revenue fund of the state. OAG Nov. 4, 1947 (9-A).

Unexpended and unencumbered balances from appropriations designated for construction or improvement of public facilities and buildings are canceled into the general revenue fund by operation of law unless they are saved from cancellation by the proviso contained in section 16.17, but determination is made by the state auditor based upon the language of the appropriation and budgetary information obtainable from other state agencies. OAG Apr. 27, 1950 (9-A-39).

16.18 RECEIPTS DEPOSITED WITH STATE TREASURER

It is the duty of the commissioner of administration to provide for periodical inspection and appraisal of state property, real and personal. The doctrine "de minimis non curat lex" applies. The state agencies are required on request to make reports to the department of administration as are needed to keep current and perpetual inventories kept by the commissioner. The state agency is required to report to the commissioner when supplies, materials, or equipment are no longer of use to the department. The commissioner may transfer such property to any other agency in need of same and if not needed, may sell same. The proceeds from such sale will be credited to certain funds under the conditions of sections 10.33 to 10.36 and 16.18. OAG Mar. 21, 1952 (980-A).

16.201 DUTIES OF COMMISSIONER

HISTORY. 1945 c 609 s 59.

16.21 CONTINGENT APPROPRIATIONS

Appropriation of state funds; moral obligation justifying public expenditures. 33 MLR 661.

The commissioner of administration with the approval of the governor may transfer \$5,000 from the general contingent fund to a revolving fund and may attach a condition that the sum transferred shall be returned to the general contingent fund when collections for the revolving fund are made in sufficient amount to enable the return of the money so advanced. OAG Oct. 11, 1948 (9-A-29).

16.22 RIGHTS AND POWERS TRANSFERRED TO COMMISSIONER; EXCEPTIONS

Due to a difference between the provisions of section 6.21 and section 16.25, the legislature clearly intended that the state auditor, for the purpose of budget-making

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and accounting, has the power to prescribe classes of expenditures and revenues, but, in doing so, must act with the advice and assistance of the commissioner of administration and the public examiner. OAG Sept. 19, 1947 (24-A).

16.23 OFFICE SPACE ASSIGNED

The commissioner of administration has authority to provide office space for all state agencies, including the state board of examiners of nurses. Board members are entitled to mileage, compensation, and expenses in attending meetings outside of the city when necessary. OAG Mar. 7, 1949 (905-H).

16.25 COMMISSIONER TO MAKE RULES

In resolving the inconsistency between sections 6.21 and 16.25, the commissioner of administration does not have the power to prescribe classes of expenditures and revenues for the purpose of budget-making and accounting. The duty is imposed upon the state auditor acting with the advice and assistance of the commissioner of administration and the public examiner. OAG Sept. 19, 1947 (24-A).

16.37 INSURANCE OF STATE BUILDINGS; FUEL

Payment of insurance premiums for liability insurance for state employees operating state-owned motor vehicles is authorized by law but such payment for insurance covering motor vehicles owned by state employees is not permissible. OAG Apr. 28, 1953 (980-A-8).

16.531 Obsolete.

16.63 SALARY DEDUCTIONS, AUTHORIZATION

HISTORY. 1951 c 678 s 1.

AGRICULTURE

CHAPTER 17

DEPARTMENT OF AGRICULTURE, DAIRY AND FOOD

17.01 CREATION

HISTORY. 1919 c 444 s 1; 1921 c 78 s 1; 1921 c 495 s 6; 1923 c 261 s 1; 1925 c 426 art 6 s 1; 1925 c 426 art 7 s 1; MS 1927 s 3793, 6023; 1929 c 387; M Supp s 3132, 53.25, 53.26, 53.27½; 1949 c 739 s 6; 1951 c 713 s 4. (6023, 53-27½).

17.01 NOTE

The regulation of the manufacture and sale of dairy products originated with Laws 1885, Chapter 149. The department was headed by a state dairy commissioner. The department of dairy and food was created by Laws 1899, Chapter 295, headed by a state dairy and food commissioner. A department of agriculture, under a commissioner of agriculture, was created by Laws 1919, Chapter 444, with original powers, together with certain powers transferred from the railroad and warehouse commissioners. Under the general consolidation act, Laws 1925, Chapter 426, Article VI, Section 1, created a department of dairy and food headed by a commissioner, and Article VII created a department of agriculture also headed by a commissioner. The two departments were consolidated by Laws 1929, Chapter 387, into one department known as the department of agriculture, dairy, and food, under a single commissioner of agriculture, dairy, and food. The department as such was continued under