

Since a member has the right to select the additional death benefit coverage, he should also have the right to terminate or cancel the said coverage and relieve himself of making further contributions for said additional death benefit.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

JANUARY 8, 1958

HONORABLE AARON K. NEED
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-2

DEAR MR. NEED:

Our opinion has been requested as to the applicability of the statutory procedure for advertisement for bids to the acquisition by State departments and agencies of articles or supplies which are manufactured or produced by institutional labor pursuant to R.S. 30:4-92 et seq. We advise you that such transactions are not governed by the State Purchase Act (P.L. 1954, c. 48).

The State Purchase Act vests authority in the Director of the Division of Purchase and Property over all purchases, contracts or agreements to be paid in whole or in part out of State funds, subject to the requirement of advertisement for or waiver of bids. The terms "purchases, contracts or agreements" connote transactions between separate legal entities. Articles manufactured by institutional labor in the State institutions are not purchased or contracted for purchase by the respective State departments or agencies to which they are supplied, but are transferred pursuant to a system of debits against the receiving department or agency and credits in favor of the State Use Division in accordance with R.S. 30:4-100, which we quote:

"The Legislature shall annually appropriate to the department a sum for working capital, which may be allotted by the State Board among the several institutions, which the State Treasurer shall, upon the Comptroller's warrant of the State Commissioner of Taxation and Finance, as directed by rule or order of the State Board, advance to the several officers of the respective institutions designated as the custodians of the working capital thereof. Settlements between institutions, departments, boards and other State agencies shall not be made in cash, but by debits and credits on the comptroller's books. The custodian of working capital funds of an institution shall, on or before the tenth day of each month, file with the State House Commission a statement showing all deliveries made by such institution during the month immediately preceding. Delivery shall be considered to have been made only when the producing institution shall have received and submitted, with its monthly report, the acknowledgment of receipt from the receiving institution,

board, commission or other State agency, or in event of sales in the open market, acknowledgment of receipt by the purchaser. A separate report to be submitted with the report of deliveries shall show all products sold, acknowledgment of delivery of which has not been received. All receipts from sales shall be credited to the working capital appropriation for the then current fiscal year and thereafter, from year to year, as replacement thereof, without further appropriation and shall not lapse into the unappropriated funds of the State treasury except as hereinafter provided. * * *

The acquisition by the State departments and agencies of articles manufactured or produced by institutional labor is mandatory; the State departments and agencies are without discretion to purchase or contract for the purchase of such articles on the open market according to R.S. 30:4-95, which provides:

"The several State and county institutions and noninstitutional agencies, the several counties and all departments and agencies of the State shall purchase from the State board all articles or supplies manufactured or produced by institutional labor which are needed by them and shall not purchase any such supplies or articles from another source unless the State board shall first certify on requisition made to it that it cannot furnish the same or the equivalent thereof. The State board as far as practicable shall honor all requisitions."

Under R.S. 30:4-94, the various State departments and agencies receive a catalogue containing a description and price list of all articles manufactured or produced by institutional labor. That catalogue is sufficient notice to require the acquisition of such articles or supplies from the State Use Division in the Department of Institutions and Agencies, in accordance with R.S. 30:4-95.

The reorganization act of 1948, in establishing a Division of Purchase and Property within the Department of Treasury, specifically excepted the statutes dealing with the purchase or use of institutional labor from the statutes defining the jurisdiction and control over State purchasing of the Director of the Division of Purchase and Property (N.J.S.A. 52:18A-19).

We accordingly advise you that the requirements of advertisement for or waiver of bids and other specific terms of Chapter 48 of the Laws of 1954 and other statutes dealing with State purchasing are inapplicable to the acquisition by any State department or agency of articles or supplies manufactured or produced by institutional labor.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General